

The Normal-Operating Buyer's Rule under the Interpretation Theory

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Abstract: Article 404 of the Civil Code expands the scope of application of the normal operating buyer rule from floating mortgage to movable property mortgage, which has the legitimacy to promote the benign development of commercial transactions, protect reasonable trust, and take into account the interests of all parties. This rule applies preferentially to the general rule of free transfer of mortgaged property in the field of movable property mortgage, which is generally not affected by an agreement restricting or prohibiting the transfer. In order to ensure the fair application of the rules, the "normal business activities" should be interpreted in a limited manner, and the applicable conditions for "reasonable price paid" and "acquisition of mortgaged property" should be analyzed in detail, so as to avoid the indefinite expansion of the scope of application of the rules and exclude the buyer's good faith from the applicable elements. The normal-operation buyer's rule protects the buyer's ownership by blocking the recovery and effect of the mortgage right as consideration, and should give the mortgagee a remedy for the subrogation right in the price.

Keywords: Normal business activities; Mortgage of movable property; Pursuit and effectiveness

1. Introduction

The buyer's rule in normal business plays an important role in the civil legal rules, and has an important impact on the chattel security transaction. However, due to its relatively simple provisions, in judicial practice, there is considerable controversy over its constituent elements and legal effects. In order to resolve these disputes, Article 56 of the Interpretation of the Supreme People's Court on the Application of the Guarantee System of the Civil Code of the People's Republic of China further refines the rules for normal business buyers. Regulations will surely have a positive impact on future judicial practice and secured transactions. In order to correctly understand and apply the normal business buyer rules, this article will discuss the legitimacy of the rules, the requirements for application, the mortgagee's relief methods and other issues.

2. Analysis of Legitimacy of the Normal-Operating Buyer's Rule

2.1. Promote the benign development of commercial transactions

The modernization of the security system requires that the movable property mortgage should be publicized by registration, and the buyer can obtain whether there is a mortgage right on the subject matter through inquiry. According to the movable property mortgage registration confrontation rules, the registered buyer of movable property with the mortgage right does not constitute good faith, and the movable property mortgagee has the right to pursue to the subject matter and exercise the right of mortgage. The "Rules of Ordinary Business Buyers" exempt buyers conducting normal commercial transactions from the obligation to search the register, enabling them to acquire "clean" ownership consistent with the purpose of the transaction and protecting their unsecured transactions from the risk of secured transactions^[1]. The abolition of the buyer's inquiry obligation in normal business activities is conducive to reducing costs and improving transaction efficiency. On the one hand, the normal operating buyer is engaged in the daily trading activities of maintaining production and operation, and if the buyer is required to inquire into the register at this time, it will undoubtedly make the buyer's transaction overload. In order for the buyer to obtain the subject matter without defects in rights, it must perform the inquiry obligation in advance or obtain the consent of the mortgagee, which will inevitably lead to the extension of the transaction time and the increase in transaction costs. On the other hand, in real life, especially in civil transaction activities, the buyer simply does not know that a

mortgage right will be established and its registration on the transaction movable property, nor does it have the concept and awareness of timely inquiry into the status of the subject matter rights, and the compulsory performance of the inquiry obligation is inconsistent with reality. Therefore, the application of the normal-operation buyer rule not only ensures the normal circulation of the mortgagor's own operating property, but also saves transaction costs, improves transaction efficiency, and gives a full play to its function of promoting the benign development of commercial transactions.

2.2. Protect reasonable trust

In modern society, trust is an important factor in the process of commercial transactions, running through the whole process of trading activities, and is the guarantee for free transactions between strangers^[2]. Otherwise, social life will be difficult to carry out normally, and market transactions will be difficult to sustain. And the normal operation buyer rules also protect the buyer's reasonable trust in the seller's ownership of the goods sold. First, in the ordinary course of business, the buyer generally does not challenge the operator's full ownership of the subject matter, and the rule protects the reasonable trust of consumers in such transactions. Second, the buyer will further carry out normal trading activities based on its trust in the commercial goods that do not have a collateral burden. Especially for consumers, the rules of the normal-operation buyer protect their reasonable trust in the purchase of daily necessities, so as to achieve the reasonable behavior expectations of the buyer in the normal business transaction, establish a stable sense of transaction security, and make social life unfold in an orderly manner.

2.3. Balance the interests of all parties

For the buyer, the core legislative intention of the normal operation buyer rule is to protect the buyer who buys the chattel from the operator, eliminate the concern about the right burden on the purchase of the chattel, and avoid its falling into the ownership dispute. The rule breaks free from the limitations of the scope of the floating charge and extends to the entire field of movable property mortgage, reducing its transaction burden in its normal business activities. It means that the buyer can block the recovery effect of the mortgage right on the subject matter and obtain ownership of the subject matter without inquiring in advance, which is in line with the psychological expectation of its purchase behavior; For mortgagors, the rule is conducive to maintaining their daily production and operation activities, eliminating the impact of the burden of rights on commodities in normal trading activities, and promoting the circulation of the mortgagor's operating assets. For the mortgagee, the rules of normal operation buyer seem to sacrifice its interests to promote commercial transactions, but the analysis of its internal logic is not contrary to the commercial expectations of the mortgagee, and will not affect the realization of its claims. First of all, usually when the mortgage contract is signed, the mortgagee has some understanding of the operator identity of the mortgagor and the field of its operation. According to this analysis, the mortgagee has a psychological expectation for the future fact that the buyer obtains the chattel through the mortgagor's business behavior. Secondly, when the mortgagor's business operation is promoted, its solvency will be enhanced, which is conducive to the realization of the mortgagee's debt. Finally, the mortgagee is not without a means of relief. According to article 404 of the Civil Code, only after the buyer pays a reasonable price can the subject matter be exempted from the recovery effect of the mortgage right and obtain "clean" ownership of the subject matter, and the mortgagee may exercise subrogation in rem for the reasonable price to ensure the realization of the claim. According to article 406, paragraph 2, of the Civil Code, if the mortgagee believes that the mortgagor's transfer may infringe on its mortgage right, it may request the mortgagor to pay off the debt or deposit the proceeds in advance.

2.4. Maintain the security and stability of market transactions

In modern society, with the development of economy and technology, there are more and more forms and types of chattels, and their value is also higher and higher. Correspondingly, chattel guarantees are becoming more and more extensive, showing a trend of keeping pace with real estate guarantees. This situation makes the Civil Code and Civil legal norms attach great importance to chattel mortgages, that is, to implement a registration confrontation system for chattel mortgages, and chattel mortgage registration can fight against third parties. At this time, when the buyer purchases the commodity with the mortgage right, he does not know that the commodity is mortgaged and registered, and he will bear the burden of the mortgage right. The buyer's ownership will be affected by the recovery effect of the mortgage right. This will seriously jeopardize transaction security and stability.

Judging from the objective social situation, when ordinary consumers buy commodities, the normal business environment where they are usually directly determines that they reasonably trust that the purchased commodities have no other encumbrances, so there is no habit of inquiring one by one whether there is a mortgage on the goods. Therefore, if there is no normal business buyer rules, the buyer's reasonable purchase expectation will not be realized, and the buyer's legal rights will not be effectively guaranteed, which will seriously affect the transaction security. For this reason, the buyer rules for normal business operations conform to the trend of the ever-expanding scope of chattel mortgages and block the effect of chattel mortgages. By effectively avoiding the obstacles brought by chattel mortgages to normal transactions, the normal business buyer rules eliminate the negative effects of chattel mortgages and become an important part of the chattel mortgage system.

3. The Relationship Between the Normal-Operating Buyer's Rule and the Relevant Norms of the Civil Code

3.1. The relationship between the normal-operating buyer's rule and Article 406, paragraph 1, of the Civil Code

First, the normal-operating buyer rule is a special provision of the general movable property mortgage rule. The mortgage is theoretically secured by the exchange value of the subject matter, so the mortgagor still has the right to dispose of the collateral during this period. Article 406, paragraph 1, of the Civil Code provides for the free transfer of mortgaged property and recognizes the recovery effect of mortgage rights. The premise that invoking the normal-operating buyer's rule against the validity of the mortgage when the registered mortgage right is on movable property is that the mortgaged movable property must fall within the normal business scope of the buyer. It can be seen from this that the normal-operating buyer rule is an exception to the free transfer of collateral rule. In addition, article 406 is used as "mortgage property" and article 404 uses the term "mortgage movable property", which includes mortgaged movable property^[3]. Therefore, the normal-operating buyer rule and the free transfer of movable property are general and special relationships and should be applied in priority.

Second, the normal-operation buyer rule is not bound by an agreement on restricted assignments. Article 406, paragraph 1 of the Civil Code not only establishes the rules for the free transfer of mortgaged property, but also stipulates the exclusionary effect of "otherwise agreed" on the basis of respecting the autonomy of intention, that is, the mortgagee may agree with the mortgagor in advance to restrict its transfer of the collateral during the mortgage period, so as to ensure the smooth realization of the mortgage right in the later stage. However, this agreement does not apply to the ordinary-running buyer rule for the following reasons: First, the restricted transfer content of the "otherwise agreed" provision is provided for in the rules for the free transfer of collateral. According to the foregoing, it is a general rule and therefore cannot be applied preferentially. Second, if the agreement is given "confrontational" effect, then in practice the mortgagee will use its dominant position to force the mortgagor to agree with it on matters related to the restriction of transfer, at which point the normal operating buyer rule will be shelved, which is contrary to the legislative purpose and normative purpose of the rule. Third, the purpose of the expanded application of the normal-operating buyer rule is to exempt the buyer from the obligation to review the burden of rights on the subject matter of the transaction and to improve the efficiency of the transaction. According to Article 43 of the Interpretation of the Supreme People's Court on the Application of the < the Civil Code of the People's Republic of China > Relevant Guarantee System (hereinafter referred to as the Judicial Interpretation on Security), if the agreement is registered and publicized, the mortgagor transfers the mortgaged property in violation of the agreement, the effect of the change of property rights will not be issued. If the exclusionary effect of the agreement binds the ordinary-running buyer, the buyer still has to perform the obligation of inquiry, which conflicts with this rule.

3.2. The relationship between the normal-operating buyer's rule and Article 403 of the Civil Code

Article 403 of the Civil Code provides for the rule of unburdened acquisition by bona fide assignees in mortgages of movable property. When the mortgage movable property is transferred, there are three situations: First, the mortgage right in the movable property has been registered, and the buyer can be presumed to be aware of the mortgage right regardless of its subjective state; Second, when the mortgage right of movable property is not registered, the buyer knows; Third, the mortgage of movable property is registered, and the buyer is unaware of this. In the first two cases, the buyer clearly did not constitute good faith and could not apply the bona fide assignee's unburdened acquisition rule.

However, when the mortgaged property falls within the normal business scope of the mortgagor, the normal-operating buyer rule may apply, otherwise the general movable property mortgage rule provided for in article 406 applies. The buyer in the third case may be deemed to be in good faith, in which case both rules may apply if the conditions of the ordinary-run buyer rule are satisfied. Some scholars argue that the rule of the primacy of *lex specialis* over general law should still be followed for this competing relationship, but they believe that the rule of bona fide acquisition of movable property in article 403 at this time is a special rule that is more appropriate to the situation^[4]. This view seems unconvincing. Compared with the rules for bona fide acquisition of movable property, the scope of restrictions on normal business activities under the normal operating buyer rules is more specific, and the rules for normal-operation buyers in article 404 should be special rules, and the rules for bona fide acquisition of movable property are general rules. Where the constituent elements do not meet and the application of the normal-operating buyer rule is not possible, the buyer may still invoke the bona fide assignee's unburdened acquisition rule to obtain ownership. Therefore, when competing provisions and rules, the special rule of the ordinary operating buyer should be applied on a priority basis to ensure the fairness and correctness of judicial adjudication.

3.3. The relationship between the normal-operating buyer's rule and Article 311, paragraph 1, of the Civil Code

Although the normal-operating buyer's rule is similar to the bona fide acquisition, both of which are to protect the trust of the buyer, the normal business buyer rule cannot be considered a special good faith acquisition for the following reasons:

First of all, the preconditions of the two are fundamentally different. The precondition for "acquisition in good faith" is that there is no right to dispose of, and the right to dispose cannot realize the appearance of rights that "makes a third party have reason to believe" in the rules of good faith acquisition. The mortgagor has the right to dispose of the mortgaged property. Secondly, the stakeholders in the balance of the two are different. Compared with the acquisition in good faith, the normal-operating buyer's rule has an additional layer of mortgage relationship, and does not pay attention to the interests of the owner. Again, the two have different requirements for the goodwill of the buyer. Goodwill in acquisition in good faith means that the buyer does not know and should not know that the assignor has no right to dispose of. However, there is no express provision in the law of good faith in normal business activities, and this article believes that good faith is not one of the applicable requirements of the normal business buyer rules (see below for details). Finally, although both of them require a reasonable price in terms of consideration, the buyer in normal business activities needs to "have paid" a reasonable price compared with the buyer in the acquisition in good faith.

In short, it is more reasonable to juxtapose it with the bona fide acquisition system, and both belong to the trust protection rule, rather than saying that the normal-operating buyer's rule is a special good faith acquisition system.

4. Requirements for the Application of the Rule of the Normal-Operating buyer

4.1. Normal business activities

Clarifying the meaning and scope of normal business activities is a prerequisite for a correct understanding and application of the rules of the normal-operations buyer. According to article 56, paragraph 2, of the Judicial Interpretation on Security (Paragraph 2, Article 56 of the Interpretation of the Supreme People's Court on the Application of the Guarantee System of the Civil Code of the People's Republic of China: The seller's normal business activities referred to in the preceding paragraph refer to the seller's business activities that fall within the business scope clearly recorded in its business license, and the seller continues to sell similar goods. "Holders of security interests" as used in the preceding paragraph refers to mortgagees that have been registered, sellers of retention-of-title sales, and lessors of financial lease contracts.), the definition of normal business activities may be interpreted from the following aspects:

First, business activities must be normal. First of all, from the perspective of the transaction entity, It should be the normal business activities of the mortgagor rather than the normal business activities of the buyer^[5]. Although some scholars believe that under the background of encouraging business freedom and "entrepreneurship", whether the mortgagor has business qualifications does not belong to

the literal meaning of "normal business activities"^[6]. But in U.S. law, sellers must be engaged in the sale of similar goods, and the term is intended to refer to professional sellers, as opposed to hard-to-classify sellers who do not regard selling these goods as a profession. This is mainly because the buyer can only reasonably rely on the unsecured encumbrance on the goods he sells only if he continues to engage in and trade in the commodity. Moreover, in social life, the business qualification and business qualification of the assignor (mortgagor) is the easiest and direct way for the buyer to judge whether it is a normal business activity. Then, from the relevant provisions of the United States Uniform Commercial Code, it can be seen that "normal" means that the seller's sales behavior is consistent with the usual or customary practice of the seller's industry or with the seller's own usual or customary practice^[7]. The emphasis here is on "usual" and "customary", that is, when the buyer meets the requirements of trading habits and transaction consistency in the way of transaction, the buyer will have a reasonable trust in the absence of a security right burden on the commodity.

Secondly, the definition of business activities. First of all, from the perspective of the scope of the transaction, according to article 56 of the Judicial Interpretation on Guarantees, business activities should be limited to the business scope clearly recorded in their business licenses. However, it should also be handled flexibly, and for sales outside the scope of business, if the buyer reasonably believes that it is engaged in normal business activities by virtue of the seller's rights, the trust interest should also be protected. If the provisions of the judicial interpretation are rigidly applied in practice and the scope of business activities is strictly limited to the scope of business, the buyer will have to inquire about the seller's business license before acting, which will greatly hinder the realization of the purpose of improving the transaction efficiency of the normal operation buyer rules. Secondly, from the perspective of transaction attributes, business activities should be limited to buying and selling transactions. The legal terms in article 56, paragraph 1, of the Judicial Interpretation on Security are "buyer" or "seller", (Paragraph 1 of Article 56 of the Supreme People's Court's Interpretation on the Application of the Guarantee System in the Civil Code of the People's Republic of China: "Where a buyer acquires movable property in which a security interest has been established by paying reasonable consideration in the seller's normal business activities, and the security interest holder requests priority compensation for the movable property, the people's court will not support it.") which shows that the transaction here should be the activity of the buyer and the seller. However, some scholars believe that for the purpose of mortgage, as long as the mortgagor is engaged in the disposal of collateral for the purpose of maintaining normal business, it is a normal business activity, and leasing, guarantee and other acts should be included^[9]. This view is debatable. Since the creation of a security right will inevitably threaten the sequential interests of the original mortgagee in priority, the normal operating buyer's rules have already excluded the recovery effect of the original mortgagee, and the inability to protect the subordinate interests in the repayment of the debt at this time will lead to serious infringement of the rights of the original mortgagee. In addition, the normal-operation buyer rule is a special protection of the buyer's ownership, which is unfair to the bona fide buyer as a result of the recovery effect of the mortgage right. However, the bona fide lessee enjoys the claim, and there is nothing wrong with asserting the claim when the right cannot be realized due to the mortgage right. Finally, normal business activities are legal. It should refer to legal buying and selling behavior, and illegal buying and selling behavior does not belong to the normal business activities mentioned here. For example, if the buyer lacks the qualifications required by law to purchase a certain commodity and buys the commodity, it does not belong to the normal business buyer

4.2. A reasonable price has been paid

As one of the conditions for the application of the normal operating buyer's rule, the fundamental purpose of "reasonable price has been paid" is to prevent the mortgagor from colluding maliciously with the buyer to the detriment of the interests of the mortgagee. The provision of a reasonable price increases the general property liability of the mortgagor and helps to reduce the risk of damage to the mortgagee due to lack of recovery effect. Therefore, when a bona fide third party acquires the subject matter free of charge, there is no need for special protection of that title.

To begin with, there are different views on whether the buyer must require the price to be "paid" to protect the buyer rule of "normal operation". Some think that the price should not be required "already" paid, that is, regardless of whether the price has been paid, as long as the mortgagor between the mortgagor and the buyer agreed on a reasonable price, even if not yet paid, the buyer can also get the "normal operation buyer rules" protection. Hold this view of scholars more from the dimension of integration with international trading practice, put forward the United States the unified commercial code and the United Nations trade law commission guarantee transactions, paradigm are not the buyer

"has" pay reasonable price as the application of the "normal business buyer rules" precondition, so our country legislation does not need to require the price "has" to pay. Some scholars, from the dimension of system application, believe that the constitutive requirements of good faith acquisition in China require "transfer at a reasonable price", in order to coordinate with the constituent conditions of good faith acquisition, and to balance the interests between the parties, to prevent the mortgagor and others conspired to defraud the mortgagee, the price should be required "already" paid. This article supports the latter, meaning "paid" as the price paid at the time the mortgage proceeds to the collateral. First, according to the context, it is the price paid by the seller to the buyer. If the collateral is transferred in the ordinary course of business, the mortgage right loses its ability to recover in accordance with the provisions of law, but the mortgagee may recover the reasonable price already paid by subrogation to make up for the property losses suffered by the mortgagee. Secondly, the buyer's payment of the price cannot be later than the time when the mortgage right is recovered to the collateral, and if the act of payment of the price is not performed before then, then there is no need for special protection for the buyer's ownership, and this deadline can be presumed with reference to the provisions of the Civil Code as the first time the mortgagee notifies the mortgagor or the first time it takes legal remedies. With the establishment of China's credit trading system, in practice, the common payment methods are third-party payment, installment payment, advance deposit, etc., as long as the mortgage right is recovered to the collateral, the payment in accordance with the above methods can be regarded as "paid". Of course, this provision also means that in the scope of vision of the Civil Code, no matter how there is any debate in science, in later practice, the buyer must meet the requirements of "reasonable price" in order to obtain the protection of "normal operation buyer rules".

What's more, the determination of "reasonable price" can be examined from the two aspects of transaction price and payment method. "Reasonable price" can be determined according to analogy to the current laws and norms. In article 311 of the civil code about the provisions of goodwill "reasonable price", in the mortgage property, pledge property, lien property sale or discount, appeared "market price", in the contract price or remuneration is not clear how to determine, also appeared "market price". Based on the system interpretation of legislation, it is determined that the "reasonable price" in the "normal operation buyer rules" should naturally be coordinated with the relevant rules. Article 18 of the Interpretation I of the Property Rights Part I of the Civil Code stipulates that the determination of a reasonable price in the bona fide acquisition system shall be based on the specific circumstances of the subject matter itself and the market price and custom at the time of transfer. (Article 1 of the Judicial Interpretation I of the Property Rights Part of the Civil Code¹⁸ Strip: The "reasonable price" referred to in item 2 of the first paragraph of Article 311 of the Civil Code shall be comprehensively determined on the basis of the specific circumstances such as the nature, quantity and payment method of the subject matter of the transfer, with reference to factors such as the market price of the place of transaction at the time of transfer and the trading habits.) Article 19 of the Judicial Interpretation II of the Contract Law defines what kind of debtor's malicious disposition of property is, and sets out the standard of obviously unreasonable price from the negative side. Both the bona fide acquisition system and the creditor's requirement for a reasonable price when the debtor disposes of the liable property in bad faith have the purpose of maintaining the liable property, so the determination of the reasonable price under the normal operating buyer rule can be roughly applied by analogy^[3]. Then, the payment method does not need to be limited to cash payment, but should be flexibly explained in line with commercial practices, including reciprocity and reciprocity. As for whether debt-for-things can be used as a payment method, the Uniform Commercial Code of the United States holds a negative position on this. This paper argues that this position is debatable. Whether repayment of debt with property can be a reasonable way to pay the price depends on whether it has commercial substance. Especially in the case of debt restructuring, since the buyer as the creditor usually makes concessions, the financial situation of the mortgagor as the debtor improves and the liability property increases, which can undoubtedly strengthen the protection of the interests of the mortgagor and benefit all parties.

4.3. Acquisition of mortgaged property

Article 404 of the Civil Code provides for "acquisition of mortgaged property", as the name suggests, is that the buyer has acquired ownership of the mortgaged property based on the rule of change of movable property rights. If the buyer does not acquire ownership of the collateral, it cannot resist the mortgagee's recovery as a creditor alone, and there is no blocking of the recovery effect of the security right, and the purpose of the normal operating buyer's rule cannot be achieved. The acquisition of the mortgaged property here must therefore be the transfer of ownership of the mortgaged property to the buyer. Since the change in movable property rights is based on delivery, the buyer acquires the owner from the date of delivery by the seller.

The change of movable property rights based on legal acts requires delivery, so the buyer obtains the mortgaged property ownership of property depends on the seller's act of delivery. Delivery is divided into actual delivery, simple delivery, assignment of the right to request for return and change of possession. However the mode of delivery, there should be no special restrictions, and the choice of delivery method will not affect the interests of all parties. For the mortgagor, regardless of the delivery method, the purchase and sale of the collateral is carried out on the basis of the mortgagor's acquisition of a reasonable price or claim for the price, and the transaction itself has no loss. As far as the mortgagee is concerned, as long as the mortgagor can obtain a reasonable price or a claim for the price, the mortgagor's general liability property has not decreased, and it is still able to repay the debt to the mortgagee, and the realization of the mortgage right has not been hindered by different delivery methods; As far as the buyer is concerned, in the ordinary course of business, transactions based on reasonable trust in the mortgagor should not be based on the protection of the interests of the trust, and special restrictions should not be placed on the buyer's voluntary choice of delivery method based on the existence of the buyer's reasonable trust and the existence of a mortgage in rem that is not psychologically anticipated^[7].

4.4. The buyer's good faith is not a prerequisite for application

There are different views in the academic community on whether the normal-operating buyer's rules are based on the buyer's good faith as the premise: one view is that the buyer's good faith should be a condition for the application of the normal business buyer rule, and only the buyer's reasonable reliable interests deserve special protection. However, the standard of good faith is lower than that of the bona fide acquisition system, from not knowing that there is a burden of rights on movable property to not knowing that there is a prohibition or restrictive agreement between the parties on the transfer of movable property, that is, if the parties have agreed in the mortgage contract that the mortgagor shall not sell the collateral and are known to a third party, the mortgage right can be opposed to the acquisition of the property by a third party^[8]. Another view was that the buyer's good faith did not presuppose the application of the rule. Judging from the provisions of article 404 of the Civil Code, the provisions themselves do not limit the subjective state of the buyer, and the requirement of "payment of a reasonable price" is sufficient to balance the interests of the parties in the ordinary course of business.

This article agree with the latter view that is based on the premise of the application of the buyer rule in bona fide irregular business activities for the following reasons: First, the normal-operating buyer rule uses "reasonable price paid" rather than "buyer good faith" as the fulcrum to build a bridge between the interests of the buyer and the mortgagee. If the buyer is in good faith and has a reasonable reliance on the appearance of the right in the transaction, its expected benefits will not be frustrated by the false state of the right in rem; If the buyer is malicious, it will also exclude the effectiveness of the mortgagee because the behavior satisfies the requirements stipulated in the law, thereby obtaining the "clean" ownership of the transaction property without the right to bear. While the buyer meets the requirements of the rules, the mortgagor must have correspondingly obtained the reasonable price or price claim of the collateral. Regardless of whether the buyer is in good faith or not, the property of the mortgagor's general liability has not been damaged, and the protection and realization of the mortgagee's rights has not been hindered or infringed. Second, the buyer's bona fide claim is contrary to the original intent of the buyer's rules of normal operations. According to Article 406 of the Civil Code, if there is a restrictive or prohibitive agreement on the transfer of collateral between the mortgagor and the mortgagee, and the agreement is publicized, it may be given "against" a bona fide third party. Under the normal-operating buyer rule, the buyer, in order to avoid the antagonistic effect of the special agreement between the parties to the mortgage contract, prevents the recovery of the mortgage right and must search for the existence of a security right burden on the property before the transaction, which clearly conflicts with the purpose of the rule exempting the buyer from the obligation of prudent search.

5. Remedies for Mortgagees

The famous German jurist Philip Heck believes that the interests involved should be considered in each legal norm when the law is created, and the interests that the law aims to give value to and the interests that are sacrificed. Obviously, it is the buyer who has a superior position in the "normal business buyer rules", and the title it acquires "wins" the mortgagee established earlier by the mortgagee. Where the mortgagee blocks the recovery and effectiveness of the mortgage right due to the normal operation buyer rules, he may obtain the subrogation right in the price and property in

accordance with the Transfer of mortgaged property, resulting in the infringement of the mortgage right. Mortgages on movable property protect the mortgagee's right of first refusal with the specificity of the mortgage. Under this rule, even if the mortgagor has obtained the right to claim the price or payment of the price, the mortgagee will then enjoy the subrogation right in the price and property, which theoretically does not hinder the realization of the mortgagee's rights, but in essence, due to the loss of specificity of the price and the confusion with the mortgagor's other property, it cannot guarantee the mortgagee's priority repayment. This clearly exceeds the mortgagee's expectation of establishing a mortgage, resulting in the inability to realize the function of the mortgage security system. Therefore, when the mortgaged property is indeed disposed of to a "good faith" buyer based on the "normal business buyer rules", the mortgagee's mortgage right attached to the mortgage object will be extinguished. At this time, in order to balance this conflict of interests, It is necessary to give the mortgagee certain relief measures to protect their rights and interests.

In order to ensure to the greatest extent possible that the interests of the mortgagee under the normal-operating buyer's rules are not actually derogated, the mortgagee's right to continue to receive priority in repayment of the proceeds from the transfer of the mortgaged property should be recognized. Paragraph 2 of article 406 of the Civil Code stipulates that if the mortgagee is sufficient to prove that the transfer of the mortgaged property may damage the mortgage right, the mortgagee has the right of subrogation in rem for the proceeds of the transfer of the collateral, and may ask the mortgagor to pay off the debt or deposit the proceeds in advance. That is to say, as long as the transfer of the mortgagor has the possibility of infringing the mortgage right, the mortgagee can enjoy the right of subrogation in the price and property. Although the Civil Code does not specify "the possibility of harming the right of mortgage", according to the legislator's interpretation, it should include the circumstances in which the value of the mortgaged property is significantly reduced by the act of transfer^[10]. The loss of the right of mortgage in the rules of the buyer of normal-operations should be one of the circumstances in which the mortgagee may be impaired, and the subrogation of the mortgagee in the price and property may be avoided from being mixed with other property. The same leads to the realization of the main claim can not be risky. However, the mortgagee cannot exercise the prepayment of debts or deposit the transfer price under any circumstances. When the creditor himself is the mortgagor and transfers the collateral, the mortgagor can directly request to deposit the transfer price. In consideration of the mortgagor's time interest, the mortgagor can generally only ask for repayment of the transfer price after the debt term expires. Unless the mortgagor violates the agreement with the mortgagee that the mortgaged property cannot be transferred, at this time, the mortgagor's term interests are not protected, and the mortgagee can request to pay off the debt in advance. If the third party is the mortgagor, the mortgagor has no right to request repayment in advance, but can only request a deposit for the transfer price. If the transfer price is higher than the debt amount, the deposit price shall be limited to the debt amount; if the transfer price is lower than the debt amount, the debtor shall pay off the remaining debt amount after the mortgage is realized. During the transfer of the mortgaged property, in order to fully protect the rights of the mortgagee from being infringed and affected, the mortgagor shall promptly notify the mortgagee when he freely disposes of the property.

6. Conclusions

Article 404 of the Civil Code expands the scope of application of the normal business buyer rules, aiming to protect the legitimate basis of reasonable trust, maintain transaction security, improve transaction efficiency and safeguard the interests of consumers. This rule is a highlight of the Civil Code. Although this rule draws on the experience of comparative law, as a brand-new rule, it has not been tested by judicial practice in practice. With the help of legal interpretation and filling of loopholes, this paper discusses the relationship between the normal business buyer rules and relevant norms, and refines the specific application requirements of the rules, in order to restore the "quality of efficiency" in Article 404 of the Civil Code.

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