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THE INVALIDITY OF LEGAL TRANSACTIONS IN INSOLVENCY (BANKRUPTCY) CASES

DOI: 10.30729/2541-8823-2024-9-2-106-110

Abstract. *In the article, the authors analyze the key aspects of civil law impact on social relations in the field of insolvency (bankruptcy), in particular, the invalidity of legal transactions and the peculiarities of their contestation. The article contains the analysis of legal transactions that entail preferential fulfillment of the claims of certain creditors of an insolvent debtor, the peculiarities, grounds, and conditions of invalidity of such legal transactions are studied. It also examines the norms of the Federal Law "On insolvency (bankruptcy)", taking into account the opinions of practicing lawyers and the analysis of law enforcement practice. Difficulties in providing evidentiary basis for challenging legal transactions in bankruptcy, as well as the lack of law enforcement practice of invalidity of suspicious and preference legal transactions, are considered. With reliance on the theoretical basis, the peculiarities of the consequences of recognizing a legal transaction invalid are disclosed. The content of the mentioned peculiarity is investigated.*

Keywords: *bankruptcy, invalidity of transactions, bankruptcy, debtor's legal transactions, creditor's interests, protection of interests, contesting legal transactions, bankruptcy procedure.*

One of the procedures contributing not only to the opening of the judicial procedure of bankruptcy proceedings and forced sale of the bankrupt's property, but also to the restoration of its solvency, is credit watch. The credit watch as a judicial procedure is introduced by the arbitration court based on the results of checking the validity of the application of the person on recognizing the debtor as bankrupt, i.e., the court checks the character of monetary claims, their volume, terms of non-fulfillment of monetary obligations and duties. Such procedure solves some tasks:

1. Safeguarding the debtor's property.
2. Analyzing the financial condition of the debtor.
3. Identification of the debtor's creditors.
4. Maintaining a register of creditors' claims.
5. Convening and holding the first meeting of creditors.

These tasks provide a full and comprehensive analysis of the debtor's income, property and legal transactions that he has made over the last 3 years. All these and other activities related to the evaluation and study of legal transactions of the future bankrupt are carried out by the financial (insolvency) manager.

In bankruptcy cases, it is not uncommon to identify legal transactions that do not comply with the rules established by civil legislation. Such legal transactions are invalid on the grounds established by Paragraph 2 of Chapter 9 of the Civil Code of the Russian Federation, by virtue of their recognition as such by the court (voidable legal transaction), or regardless of such recognition (void legal transaction). It is considered that a legal transaction that does not meet the requirements of the law or other legal acts is null and void, unless the law establishes that such a legal transaction is void, or provides for other consequences of violation (Art. 168 of the Civil Code of the Russian Federation)[1].

In anticipation of the debtor's bankruptcy and in the course of bankruptcy proceedings, it is also not uncommon for the debtor or other persons at the expense of the debtor to make legal transactions that do not comply with the rules of the Civil Code of the Russian Federation or the Law on Bankruptcy. If the debtor's legal transactions do not comply with the rules of the Civil Code of the Russian Federation, they are recognized as invalid under the general rules of Paragraph 2 of Chapter 9 of the Civil Code of the Russian Federation. For example, the basis for recognizing a debtor's legal transaction invalid may be the conclusion of a legal transaction in violation of the debtor's legal capacity, if its legal capacity, according to Article 173 of the Civil Code of the Russian Federation, is special[2].

If the debtor's legal transactions contradict the rules of the Law on Bankruptcy, for example, have the aim of unequal counter-performance of obligations by the other party to the legal transaction, or causing damage to the property rights

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[1] Civil Code of the Russian Federation (Part one) from 30.11.1994 No. 51-ФЗ (ed. of 24.07.2023) (with amendments and additions, effective from 01.10.2023) // The Collection of Legislation of the Russian Federation. 1994. No. 32. Art. 3301.

[2] Civil Code of the Russian Federation (Part two) from 26.01.1996 No. 14-ФЗ (ed. of 24.07.2023) (with amendments and additions, effective from 12.09.2023) // The Collection of Legislation of the Russian Federation. 1996. No. Art. 410.

of creditors, or giving preference to one of the creditors over other creditors, they are recognized invalid under special rules of the Law on Bankruptcy. Such legal transactions can be recognized invalid both under the general rules of Paragraph 2 of Chapter 9 of the Civil Code of the Russian Federation, and under the special rules of Chapter III.I. of the Law on Bankruptcy[1]. This follows, firstly, from Article 168 of the Civil Code of the Russian Federation, indicating the law and other legal acts establishing requirements for legal transactions; secondly, it is expressly stated in Paragraph 1 of Article 61.1 of the Law on Bankruptcy: legal transactions made by the debtor or other persons at the expense of the debtor may be recognized invalid in accordance with the statements[2] of the Civil Code of the Russian Federation, as well as on the grounds and in accordance with the procedure specified in the Law on Bankruptcy. In other words, the grounds and procedure for recognizing legal transactions made by the debtor or other persons at the expense of the debtor are special in relation to the rules on invalidity of transactions provided for by the statements of the Civil Code of the Russian Federation.

The consequences of invalidation of a debtor's legal transaction in a bankruptcy case are provided for in Article 61.6 of the Law on Bankruptcy. In accordance with Paragraph 1 of this article, everything that was transferred by the debtor or another person at the expense of the debtor or in fulfillment of obligations to the debtor, as well as seized from the debtor under a legal transaction recognized as invalid in accordance with the Law on Bankruptcy, shall be returned to the bankruptcy estate[3].

If it is impossible to return the property to the bankruptcy estate in kind, the acquirer must compensate the actual value of this property at the time of its acquisition, as well as losses caused by subsequent changes in the value of the property, in accordance with the statements of Chapter 60 of the Civil Code of the Russian Federation on obligations[4].

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[1] Federal Law of 26.10.2002 No. 127-ФЗ (ed. of 04.08.2023) "On insolvency (bankruptcy)" (with amendments and additions, effective from 03.11.2023) // The Collection of Legislation of the Russian Federation. 2002. No. 43. Art. 4190.

[2] Nesostoyatelnost (bankrotstvo): Uchebnyy kurs. V 2 t. [Insolvency (bankruptcy): Textbook. In 2 vol.] / Pod red. d.yu.n., prof. S. A. Karelinoy. T. 2. M.: Statut, 2019. 848 p.

[3] Pravovye osnovy nesostoyatelnosti (bankrotstva): uchebnoe posobie dlya vuzov [Legal bases of insolvency (bankruptcy): textbook for universities] / V.V. Kulakov [i dr.]; pod obshchey redaktsiey V.V. Kulakova. 2-e izd., pererab. i dop. Moskva: Izdatelstvo Yurayt, 2024. 321 p.

[4] Nesostoyatelnost (bankrotstvo). V 2 tomakh. T.1: uchebnyy kurs [Insolvency (bankruptcy). In 2 volumes. Vol. 1: textbook] / E. G. Afanasyeva, A. V. Belitskaya, A. Z. Bobyleva [i dr.]; pod redaktsiey S. A. Karelinoy. Moskva: Statut, 2019. 925 p.

In the case of invalidity of the debtor's legal transactions, the issue of returning property to creditors may have important consequences in the bankruptcy process. Here are some of the possible consequences:

1. Return of property to creditors: If a court finds certain legal transactions of the debtor invalid, it may require the return of property or funds that were transferred as part of those legal transactions. This property or funds can be used to fulfill the claims of creditors in the bankruptcy process.
2. Reducing the debtor's debts: The return of property to creditors may result in a reduction of the debtor's obligations to those creditors in the bankruptcy proceeding. This can improve the debtor's financial statement and reduce the debtor's debt load.
3. Judicial procedures: the issue of returning property to creditors may give rise to court procedures and disputes between the debtor and creditors. The court will make decisions based on evidence and applicable law.
4. Investigation of invalid legal transactions: In bankruptcy proceedings, invalid legal transactions may be investigated to determine whether they were made with the intent to avoid payment of debts or to defraud creditors. This can have consequences for the debtor, including criminal liability if fraud is discovered.
5. Creditor protection: returning property to creditors can help protect creditors' interests by increasing their chances of having their claims honored in a bankruptcy proceeding.
6. Prioritization: in some cases, bankruptcy laws may prioritize the return of property. For example, certain types of creditors may have a priority right to recover funds or property.

The invalidity of a debtor's legal transactions can have a significant impact on the bankruptcy process, and resolution of this issue may require court decisions and additional legal procedures.

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Recommended citation

Soldatov Ya.V., Galkina V.A. The invalidity of legal transactions in insolvency (bankruptcy) cases. Kazan University Law Review. 2024; 2 (9): 106–110. DOI: 10.30729/2541-8823-2024-9-2-106-110.