

Abstract

Sale of immovable property from the legal execution, one type of sale and purchase agreement, is different from general sale and purchase agreement because the sale of immovable property from the legal execution has to be done by an auction by the legal execution official only. This is an integral part of the civil legal execution so as to repay the judgment creditor from the amount received from the auction. The auction has to be in compliance with the Civil Procedure Code, the Civil and Commercial Code on auction, Sections 509-517, the ministerial regulation, which at present, the ministerial regulation on auction of property from legal execution has not been passed yet, and lastly the rule of the Court which is mentioned in the permission to sell. Since the existing laws do not have adequate details for the legal execution officials to enforce, the governmental internal order, namely, the Order of the Ministry of Justice concerning Legal Execution of the Legal Execution Official B.E. 2522 (1979) and the Decrees of the Legal Execution Department, have been issued in order to organize the auction of the properties from legal execution neatly and efficiently. In order to know rights and duties under the law, the judgment creditor, judgment debtor, interested person in the legal execution and in the auction, bidder or any other relevant person, hence, has to study the said pertinent laws and internal orders. Nevertheless, the current legal provisions do not specifically apply to the auction of the properties from legal execution so people tend to bring the case to the court for clarification. This leads to an establishment of legal precedent of the Supreme Court which has been a standard until present.

This thesis intends to study on the problems from the sale of immovable property from the legal execution. It will study in accordance with the auction process as follows.

(1) Problem arisen before the agreement is made

Owing to the fact that the auction is the sale for general public, it has to advertise in order to know the date, time, information of the immovable property going to be sold, and bidding condition. The legal execution official makes the advertisement of

the auction in the form of “notification of the legal execution official, the Legal Execution Department on auction.....” for people to acknowledge the information of the judgment debtor’s immovable property which is going to be sold by auction. The Civil and Commercial Code mentions that the buyers have to follow the advertisement of the auction and other information declared by the auctioneer before entering into the bidding. The point is whether such advertisement of the auction and other information declared by the auctioneer before entering into the bidding for the buyers to be complied are a part of the agreement on sale of immovable property from the legal execution. This author opines that both advertisement of the auction and other information declared by the auctioneer before entering into the bidding are a part of the agreement. Therefore, they bind the legal execution official as an auctioneer and the seller of immovable property on behalf of the judgment debtor as well as the purchaser at the same time.

(2) Problem arisen while an agreement is made

General sale of immovable property has to be made in writing and registered to the official; otherwise, it is void. However, sale of immovable property from the legal execution has a special character, unlike the general sale one. So as to make the auction by the legal execution official sanctity and show the authority of the State regarding transfer of ownership to the purchaser, this author concludes that it is not necessary to conform to the form prescribed in Section 456 of the Civil and Commercial Code. Thus, once the auction is completed, the ownership of such immovable property is transferred simultaneously.

Section 512, the Civil and Commercial Code prohibits the seller to bid or employ any person to bid unless it is expressly stated in the advertisement of the auction that the seller has such right. Academically speaking, there are different opinions whether the judgment debtor, an owner of the immovable property going to sale, can specifically declare in the advertisement of the auction so as to enter into the bidding. This author views that the aforesaid provision intends to enforce to the auction

where the seller voluntarily sells. In case of the compelled auction for repayment of debt, the seller should not be entitled to bid his/her own immovable property.

Where the legal execution official postpones the auction because the interested person in the auction objects that the bidding price is unreasonably low, the bidder offering the highest price has to be bound by the offered price for 30 days according to Section 309 bis of the Civil Procedure Code. On the contrary, Section 509 of the Civil and Commercial Code imposes that the bidder may retract his/her bid anytime before the auctioneer announces its completion by the fall of the hammer. This author is of an opinion that when there is a specific provision on the bound price due to the auction by legal execution, the person bound by the bid cannot retract such bid within the binding period.

(3) Problem from the revocation of auction

The revocation of auction is caused either by the violation of law by the legal execution official or by the unreasonably low bidding price. As a result, the case asking to revoke the auction is brought to the court. The time limit under the law for revoking the auction is not clearly mentioned. Thus, this author holds a position that it should indicate clear time limit so the purchaser can be confident that the purchased immovable property from the auction will not be revoked the title later on. In addition, there will be more people interested to buy immovable property from the legal execution. Besides, the reason to revoke the auction may be from the mistake of the purchaser.

(4) Problem from the enforcement of agreement

Currently, with regard to the sale of immovable property from the legal execution, it is the duty of the purchaser to evict the judgment debtor and his/her dependants from such immovable property by filing a motion to the Court asking for a decree, unnecessary to file a new case. This author expresses an opinion that the legal execution official has a duty to hand over the possession as well as is able to exercise the power under the law to hand over the possession to the purchaser.

Regarding the problem on a registration of a right and a juristic act in a unit, the Land Office it requires a letter of certification indicating that such unit is free from the

very last liabilities from Section 18 of the Condominium Act B.E. 2522 (1979), expenses from common services as well as equipments, appliances and facilities. Once such requirement is reached, the official then proceeds the registration under Section 29, paragraph 2 of the Condominium Act B.E. 2522 (1979). From this reason, the juristic condominium uses this channel to collect the said expenses from the purchaser of the immovable property from the legal execution instead of filing a case against the judgment debtor or under the preferential right entering into the case which the legal execution official did the auction. This is neither in line with the intention of the law nor fair to the seller. Therefore, in this author's opinion, it should not apply the principle in Section 29, paragraph 2 of the Condominium Act B.E. 2522 (1979) to the sale of immovable property from the legal execution.