

(3) Seller's obligations

Transfer of 'proprietary right' (Art. 563)

- title and possession need to be transferred (warranty against eviction)
- compare Art. 563 and Art. 568. Transfer of title alone will not be sufficient.
- 2000Da8533: If the property is subject to attachment, the seller must have it cancelled so that the buyer is not in danger of being evicted from the property.
- 87Daka1029: The buyer may withhold the payment of the amount secured by hypothec until the hypothec is cancelled.

Seller's obligation to maintain and preserve the thing sold until delivery (Art 374)

- Buyer's *mora creditoris* and seller's reduced duty of care (Art 401)
- Fruit from the thing sold, interest on purchase price (Art 587): Unless the parties agreed otherwise, as long as the purchaser has not paid the price seller may keep the fruit even when he is in delay of performance (just as the purchaser need not pay delay interest even while it is in delay of performance – as long as the seller has not delivered the thing sold).
- As long as the purchaser has not fully paid, the seller need not pay damage for delayed delivery (because the seller is entitled to keep the fruit/benefit of using the thing until it is delivered or until the purchaser

fully pays the purchase price. □□□ 2004. 4. 23. □□ 2004
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- Once purchaser fully pays the price, the seller may not keep the fruits (they must be handed over to the purchaser), and the seller must pay damage for delayed delivery. 2004□8210

(Art 587 of KCC; 96Da14190): "even where the purchaser is in delay for the payment of the purchase price (because the seller 'tendered' the delivery), the purchaser need not pay interest on the purchase price until the thing sold is delivered."

- Increased costs for the safekeep of the thing sold due to the buyer's *mora creditoris*: Does Art 403 apply to sale contract?

80Da211 (Even when the Purchaser is in breach of its own obligation, Seller still has the duty to maintain and preserve the thing sold until delivery anyway. Art 374.)

- Whether the seller may claim payment of purchase price even where the thing sold can no longer be delivered? (Art 538 stipulates, yes, if the seller's impossibility was caused by the buyer)
- 2010Da11323 (where the obligor sold off the property to a third party and therefore is no longer in a position to transfer the property to the obligee)
- A group of companies were sold to an investor. But the investor asserted that the seller committed a breach of warranty and refused to close. Past the agreed closing date, the seller sold one of the company to a third party (in order to reduce the financing costs for holding those companies).

- A company was sold to an investor. A portion of the seller's shares were pledged to a lender. On the day of closing the purchaser agreed to repay the debt and the seller agreed to deliver the unburdened shares. The company was subsequently sued by a third party for patent infringement. The buyer asserted that the seller committed a breach of warranty and refused to close. The seller could not repay the debt and the lender exercised the pledge and sold the seller's pledged shares to a third party. The buyer terminates the contract on the ground of the seller's impossibility of performance.

Buyer's obligation to take delivery?

Seller's obligation to transfer title of a 'specific' property

- [Seller unable to deliver the thing sold, or buyer evicted \(Arts. 570, 571\)](#)
 - [Partial failure of consideration \(Where, unbeknownst to the buyer, a portion of the title of the property belongs to a third party\) Art. 572](#)
 - [Shortage of quantity, partial destruction at the time of the contract \(Art. 574\)](#)
 - ['Hidden' charges and incumbrances](#)
 - [Property subject to Mortgage, Jeon Se Gwon \(registered lease/loan with a right of foreclosure\) Art. 576](#)
 - [Protecting \(the seller/creditor and\) the buyer in an 'official' auction \(Art. 578\)](#)
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- [Sale of receivables. Art. 579](#)

Seller's liability in respect of defect of a 'specific' property

Sale by Description

Breach of warranty v. Breach of contract

Exclusion of warranty