

# **(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, the seller may keep the fruit even when he is in delay of performance as long as the purchaser has not paid the price (just as the purchaser did not pay delay interest even while it is in delay of performance – as long as the seller has not delivered the thing sold).

*(Art 587 of KCC; 96Da14190): "even where the purchaser fails to make timely payment of the purchase price, 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)

## **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 \(Art. 578\)](#)
- [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