

7. Protecting (the seller/creditor and) the buyer in an 'official' auction (Art. 578)

- Applicable only to 'official' auction (= court supervised auction) initiated by a judgment creditor (so-called "compulsory auction") or a secured creditor (so-called "voluntary auction").
- Who is the seller? The creditor 'applies' for the sale to take place, but he is not the seller.
- Applicable also to 'public sale' initiated by tax authority. 2007Gahap3334
- Inapplicable to private auction initiated solely by the owner.
- If a guarantor's property was auctioned, the guarantor (being the 'seller') shall be liable to the buyer under Art. 578. (87Daka2641)
- Since the sale ('official' auction) is initiated by an application of a creditor and for the benefit of other creditors, creditors may also be held liable to buyer (only to the extent of the amount distributed to the creditor in question).
- Inapplicable in respect of 'physical' defects of the thing sold. Art. 580(2)
- Inapplicable when the official auction turns out to be invalid in the first place.

Remedies

- Buyer may terminate the contract by giving a notice to the 'seller', i.e.,
 - (1) to the debtor (if the property was sold as the debtor's assets); or

- (2) to the guarantor/owner of the property (if the guarantor's assets were put on auction)
- Buyer may affirm the sale and demand price reduction (Art 578(1)).
- If the 'seller' is insolvent, buyer may demand full/partial refund from the creditor(s) (to the extent of the amount distributed to the creditor in question). (Art 578(2))
- Art 578(3): If the 'seller' knew of the defective title and kept silent, or if the creditor knew the defective title and applied for the auction, buyer may claim damage from either of them. Performance measure of damage claimable. Special, statutory remedy applicable in respect of fraudulent debtor/creditor.
- Price reduction (partial refund) claim (Art 578(1)) and damage claim (Art 578(3)) are distinguished. Moreover, Art 578(3) damage claim is different from the 'usual' damage claim (which is available regardless of whether the seller's 'knowledge' of the defect).

Cases

- 91Da21640: Creditor applied for 'official' auction on the basis of a forged notarial attestation of a promissory note. Buyer paid in the price and the property was conveyed to the buyer. Conveyance subsequently judged to be null and void as the auction was initiated by a forged notarial attestation. Buyer may not resort to Art. 578. Buyer, however, may demand the creditor to return the amount distributed to the creditor through the auction (disgorgement of unjust enrichment). The sale (by court auction) was invalid in the first place.
- 92Da15574: Original building demolished and new building was built; creditor applied for auction of the new building on the basis of hypothec over the original building. Auction is null and void. Art. 578

inapplicable as the sale was invalid. Buyer will have a remedy under unjust enrichment.

- 96Ge(□)64: Property subject to a registered option was auctioned. Buyer paid in and became the owner of the property. The option was exercised subsequently and the buyer lost the title as a result. If the money is still held by the court and not yet been distributed to the creditors, the buyer may seek to cancel the auction (Art. 96 of Act for the Enforcement of Civil Judgment) and demand the court to return of the money paid in by him. If the money is already distributed to the creditors, the buyer may not seek cancellation of the auction. Buyer needs to sue the debtor (or creditors if the debtor is insolvent) separately. (Art. 15 of Act regarding Registered Option stipulates that upon auction, the registered option shall lose effect when the property is auctioned. But this provision applies when the option holder exercises the security right under the Act.)
- 2003Da59259: Debtor's property was auctioned. It turned out that the registration of the debtor's title was invalid from the beginning. The property was claimed by the owner. Buyer lost title. Art. 578 inapplicable (probably because the initial registration itself was invalid). But this judgment is criticised. [See □□□, "□□□ □□ □□□□ □□ □□□ □□□□\(□□□ 2004□ 6□ 24□ □□ 2003□59259□ □\(□□□□ 2004□ □, 1205□\)", □□□□ 2004-09-06.](#) But the validity of the security right was already being contested at the time of the court auction.
- 86Na2563: Property subject to a preliminary injunction prohibiting transfer of title. The property was nevertheless auctioned. The judgment creditor prevailed and claimed the property from the buyer arguing that the auction was in violation of the preliminary injunction. Buyer may seek remedies under 578.
- 2002Da70075: Lender A had a hypothec which had priority over a registered lease of B. The property was auctioned

by application of C, a judgment creditor. After the auction is concluded and before the price was paid in, the debtor (upon B's request) repaid the debt to A in order to preserve B's registered lease. This cancelled A's hypothec and as a result, B's registered lease survived. Without knowing this, the successful bidder paid in the price (which was set with the assumption that the registered lease would be cancelled as a result of the hypothec). The debtor who repaid the debt to A (knowing that his repayment would make B's registered lease to survive) is liable to pay damage to the buyer (successful bidder who acquired the property) under Art. 578(3).