



Верховний
Суд

OVERVIEW of the Case Law of the Supreme Court

regarding the contestation of fraudulent transactions
(transactions committed by the debtor to the detriment
of the creditor) in civil disputes

The judgments entered
in the Unified State Register
of Judgments in 2018–2023

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1. General understanding of fraudulent transactions

It is necessary to distinguish between competitive contestation and out-of-competition contestation of fraudulent transactions. The invalidity of the fraudulent transaction in the out-of-competition contestation must guarantee the interests of the creditor (creditors) "through the possibility of access to the debtor's property", even that which is in the possession of other persons. The purpose of the out-of-competition contestation is returning the property to the debtor in order to enforce it, i.e. to put the creditor in the position he had had before the fraudulent transaction was committed

The Civil Cassation Court within the Supreme Court (hereinafter – CCC SC) considered the case upon the claim of PERSON_1 against PERSON_2, PERSON_3, the third person: private notary of the Kharkiv City Notary District L.V. Yenina on declaring the donation contract invalid, and adopted a resolution in which it noted the following.

CIRCUMSTANCES OF THE CASE

On February 6, 2020, PERSON_1 filed a lawsuit against PERSON_2, requesting the court to apply the consequences of the invalid transaction and collect from PERSON_2 in favor of PERSON_1 the sum of money in the amount of UAH 240,000, as well as to demand from PERSON_2 the painting «Вселенная» (Universe) in favor of PERSON_1.

Simultaneously with the appeal to the court with the specified lawsuit, PERSON_1 submitted an application to secure the claim, requesting to impose a prohibition of alienation on 30/100 parts of the residential building belonging to the defendant PERSON_2. As a result of consideration of the specified application, the court refused to satisfy it in full.

On June 30, 2020, according to the results of the consideration of the civil case, the court issued a judgment by which the claims of PERSON_1 were partially satisfied and it was decided to collect the sum of money in the amount of UAH 240,000 from PERSON_2 in favour of PERSON_1.

On July 15, 2020, the appellate court issued a resolution by which the challenged ruling on refusal to secure the claim was cancelled and a new judgment was issued and the alienation of 30/100 parts of the residential building was prohibited.

On July 20, 2020, PERSON_1 discovered from the State Register of Property Rights to Immovable Property and the Register of Ownership Rights to Real Estate that on June 17, 2020, the defendant, PERSON_2, illegally and unlawfully transferred ownership of his only real estate, 30/100 parts of a residential building, to his mother, PERSON_3, while the civil lawsuit for the recovery of monetary funds from the defendant, PERSON_2, in favour of PERSON_1 was pending in the court of first instance, as well as the appellate review of the court decision to dismiss the plaintiff's application for interim relief.

The plaintiff believed that, having alienated his only real estate in favour of his mother, the defendant, PERSON_2, was trying in any way to make it impossible to restore the violated rights of PERSON_1, in whose favour a sufficiently large amount of money had been awarded to be recovered from the defendant PERSON_2.

The contract for the donation of part of a residential building, contested by the plaintiff and concluded by the defendants PERSON_2 and PERSON_3, shows obvious signs of fictitiousness and must be recognized as invalid.

ASSESSMENT OF THE COURT

It is necessary to distinguish between competitive contestation and out-of-competition contestation of fraudulent transactions. The invalidity of the fraudulent transaction in the out-of-competition dispute must guarantee the interests of the creditor (creditors) "through the possibility of access to the property of the debtor", even that which is in the possession of other persons. The purpose of the out-of-competition contestation is to return the property to the debtor in order to recover it, i.e., to put the creditor in the position it had before the fraudulent transaction (see the Resolution of the Supreme Court represented by the panel of judges of the Second Judicial Chamber of the Civil Cassation Court of April 5, 2023 in the case No. 523/17429/20 (proceedings No. 61-2612CB23)).

The Grand Chamber of the Supreme Court in the case No. 369/11268/16-ц (proceedings No. 14-260ц19) formulated an approach, according to which it is allowed to qualify a fraudulent transaction in out-of-competition contestation as: fictitious (Article 234 of the Civil Code of Ukraine); one that was committed contrary to the principle of good faith and the inadmissibility of right abuse (Articles 3, 13 of the Civil Code of Ukraine); one that violates public order (parts one and two of Article 228 of the Civil Code of Ukraine).

When filing the lawsuit, PERSON_1 stated that his interest was to have the disputed part of the apartment building returned to the ownership of the defendant PERSON_2, as this would enable the enforcement of the court decision of June 30, 2020, in case No. 644/894/20 in future enforcement proceedings.

According to the plaintiff, the contract for donation of a part of a residential building concluded between the defendants PERSON_2 and PERSON_3 is a fraudulent transaction that was committed to the detriment of the plaintiff's interests, since this contract could have been implemented in the procedure of enforcing the judgment of the district court after opening executive proceedings in the plaintiff's interests. PERSON_1 indicated that PERSON_2 alienated his part of the residential building in favour of his mother PERSON_3.

The defendant, PERSON_2, committed the alienation of the specified property after court proceedings had been opened in the case upon PERSON_1's claim for the application of the consequences of invalidity of the contract and recovery of funds. PERSON_2 understood that a seizure could be imposed on 30/100 parts of the residential building belonging to him at that time, according to the result of the appeal court judgment.

The court of appeal did not pay attention to the fact that the court decision of April 21, 2016 in case No. 644/13081/14-ц invalidated the agreement on exchange of 30/100 parts of a residential building for the painting "Universe" with a surcharge of 240,000 UAH, concluded on October 21, 2010 between PERSON_1 and PERSON_2, and returned the parties to their original state. In essence, PERSON_2 was obligated to return the funds once the court decision in case No. 644/13081/14-ц became effective.

The moment of execution of the contested gratuitous contract (June 17, 2020, i.e. after the opening of the proceedings, the refusal to secure the claim, the filing an appeal against ruling of the first instance court on the refusal to secure and before the adoption of the judgment in case No. 644/894/20); the counterparty with whom the debtor concluded the disputed contracts (the debtor's ex-wife).

The court of appeal did not pay attention to the fact that the private law instruments (in particular, the conclusion of a donation contract) should not be used by participants in civil transactions to avoid paying a debt (money, losses, damage) or to execute a judgment on the collection of a debt (money, losses, damage), which entered into force.

The court of appeal did not take into account that a donor, who alienates property on the basis of a gratuitous agreement in favour of his ex-wife after a lawsuit was filed against him, acts in obvious bad faith and abuses his rights against the creditor, since the disputed agreement is aimed at preventing foreclosure of the debtor's property; did not assess the circumstances established in case No. 644/13081/14-ц.

Therefore, the court of appeal made a premature conclusion that the contested donation contract was not fraudulent, i.e., committed to the detriment of the creditor PERSON_1.

The Resolution of the CCC SC dated April 26, 2023 in case No. 644/5819/20: <https://reyestr.court.gov.ua/Review/110486077>.

Fraudulent transactions (transactions committed by the debtor to the detriment of creditors) are regulated in Ukrainian legislation only in certain areas. In particular: in bankruptcy (Article 20 of the Law of Ukraine "On restoring the debtor's solvency or declaring him bankrupt"); in case of bank insolvency (Article 38 of the Law of Ukraine "On the system of guaranteeing deposits of individuals"); in enforcement proceedings (part four of Article 9 of the Law of Ukraine "On enforcement proceedings")

In addition, the Supreme Court of Ukraine broadly interpreted Article 234 of the Civil Code and qualified as fictitious a contract concluded for the purpose of avoiding fulfilment of a monetary obligation (the Resolutions of the Supreme Court of Ukraine dated October 19, 2016 in case No. 6-1873ц16, dated August 23, 2017 in the case No. 306/2952/14-ц, dated September 9, 2017 in case No. 359/1654/15-ц).

Such an approach is unlikely to cover all possible situations, and especially those when the contract was fulfilled. In a fictitious transaction, there must be no intention to create legal consequences at the time of its execution, and as a result, no property consequences (transfer of property) can arise, since such a transaction cannot create them.

Part three of Article 13 of the Civil Code of Ukraine prohibits actions intended to harm another person, as well as the abuse of rights in other forms.

One of the fundamental principles of civil legislation is good faith (paragraph 6 of Article 3 of the Civil Code) and the actions of participants of civil legal relations must be in good faith. That is, to comply with a certain standard of behaviour characterized by honesty, openness and respect for the interests of the other party to the contract or relevant legal relationship.

A civil law contract (including a donation contract) may not be used by parties to civil relations to avoid paying a debt or enforcing a court decision on debt collection that has entered into force. A debtor (donor) against whom collection proceedings have been initiated and his children (donees) who enter into a donation agreement are acting in manifest bad faith and abusing their rights against the creditor. Because they conclude a donation contract that violates the creditor's property interests and is aimed at preventing the debtor's property from being foreclosed on. Therefore, the legal system cannot ignore such actions which, although they do not violate specific mandatory norms, are manifestly in bad faith and amount to an abuse of the law.

As a result, it is possible to invalidate an agreement aimed at avoiding foreclosure on the debtor's property on the basis of general principles of civil law (paragraph 6 of Article 3 of the Civil Code) and the inadmissibility of abuse of right (part three of Article 13 of the Civil Code).

The separate opinion of the CCC SC judge Vasyl Krat dated February 14, 2018 in case No. 379/1256/15-ц: <https://reyestr.court.gov.ua/Review/72348706>.

A person may file a lawsuit to invalidate an agreement if it is aimed at avoiding foreclosure on the debtor's property, which is considered a fraudulent transaction. This can be done on the grounds of general principles of civil law and the inadmissibility of abuse of law, or by referring to a special rule that provides for the grounds for invalidation of a transaction. These grounds may include those provided for in Article 234 of the Civil Code of Ukraine or others, such as those provided for in Article 228 of the Civil Code of Ukraine

The Grand Chamber of the Supreme Court considered the case upon the claim of Bank Familnyi LLC against PERSON_1, PERSON_2, PERSON_3 regarding invalidation of the donation contract and cancellation of the state registration of ownership, and adopted a resolution stating the following.

CIRCUMSTANCES OF THE CASE

The courts found that the court verdict, *inter alia*, satisfied the civil claim and collected UAH 580,849.84 jointly from PERSON_1 and PERSON_4 in favour of Bank Family LLC.

On November 2, 2012, the court issued a writ of execution for the collection of UAH 580,849.84 from PERSON_1 and PERSON_4 jointly and severally in favour of Bank Family LLC.

On December 27, 2012, PERSON_1 entered into donation contracts with his children PERSON_3 and PERSON_2, transferring ownership of 1/2 of the house and the plot of land to each donee free of charge.

According to the plaintiff, when PERSON_1 transferred real estate in favour of his children, he was aware of the judgment for recovery of a debt from him in favour of the plaintiff, therefore he could foresee the negative consequences for himself in the event of enforcement of the judgment by foreclosure of the real estate, and thus the contested transactions are fictitious.

ASSESSMENT OF THE COURT

According to the Article 234 of the Civil Code of Ukraine, a fictitious transaction is a transaction made without the intention of creating legal consequences that were determined by this transaction. The fictitious transaction shall be declared invalid by the court.

In order to recognize a transaction as fictitious, courts must establish the presence of intent on the part of all parties to the transaction. At the same time, it is necessary to take into account that the failure of the parties to execute the transaction does not mean that a fictitious transaction has been concluded. If the parties have not taken any actions to execute such a transaction, the court makes a decision to declare the transaction invalid without applying any consequences.

The main features of a fictitious transaction are: misleading (before or at the time of concluding the agreement) a third party regarding the actual circumstances of the transaction or the valid intentions of the participants; conscious intention of non-fulfilment of contractual obligations; hiding the real intentions of the participants in the transaction.

Conclusion of a contract, the content of which contradicts the requirements of the law, since it is not aimed at the actual occurrence of the legal consequences provided for in the contract, is a violation of the parts one and five of Article 203 of the Civil Code of Ukraine, which, in accordance with Article 215 of the same Code, constitutes the basis for its invalidity in accordance with Article 234 of the Civil Code of Ukraine.

The Grand Chamber of the Supreme Court takes into account that a fictitious transaction is characterized by the fact that the parties make such a transaction just for the effect, knowing in advance that it will not be executed, considers that such an illegal purpose as the conclusion of a contract of donation of property by a person with his relative for the purpose of concealing this property from confiscation or foreclosure on the specified property in order to repay the debt, indicates that its legal purpose is different from that

directly provided for by the transaction (real free transfer of property into the ownership of another person), and therefore this transaction is fictitious and may be declared invalid by the court.

The Grand Chamber of the Supreme Court notes that the plaintiff has the right to file a lawsuit to declare the contract invalid, as one aimed at avoiding the foreclosure of the debtor's property, based on the general principles of civil legislation (paragraph 6 of Article 3 of the Civil Code of Ukraine) and the inadmissibility of abuse of rights (part three of Article 13 of the Civil Code of Ukraine), and to refer to a special norm that provides for the grounds for declaring the transaction invalid, which can be either the grounds provided for by Article 234 of the Civil Code of Ukraine or another, for example, the grounds provided for by Article 228 of the Civil Code of Ukraine.

The courts of first and appellate instances correctly established that PERSON_1, who transferred ownership of a house and plot of land to his sons, PERSON_3 and PERSON_2, was aware of a court verdict that had entered into force and that charged him, inter alia, with UAH 580,849.84 in favor of Bank Familnyi LLC, and that the debtor could foresee negative consequences for himself in the event that the verdict was enforced.

Furthermore, the courts reasonably invalidated the disputed transactions on the basis of Article 234 of the Civil Code of Ukraine due to the fact that, upon concluding the transactions on December 27, 2012, the parties' intentions did not align with their external manifestation, and they did not anticipate the legal consequences stipulated by said transactions: their actions were taken with the purpose of transferring ownership of real estate to conceal it from the execution of a future court decision to recover money from PERSON_1.

The Resolution of the SC GC dated July 3, 2019 in case No. 369/11268/16-ц: <https://reyestr.court.gov.ua/Review/83482786>.

Private law instruments should not be used by participants in civil transactions to avoid paying a debt (money, losses, damage) or to execute a judgment on debt collection (money, losses, damage) that has entered into legal force.

The abuse of the right and the use of the instruments of private law contrary to their purpose is manifested in the fact that: a person (persons) "used the right for evil"; there are negative consequences (of various manifestations) for other persons (negative consequences are represented by a certain state in which other subjects fall, whose rights are directly related to the rights of the person who abuses them; this state does not satisfy other subjects; they lack certain facts and/or conditions for the realization of their rights; the occurrence of these facts/conditions directly depends on the actions of another person, the other person may or may not be in a certain legal relationship with these persons who "suffer" from the abuse of their rights); the legal status of the person(s) is taken into account (the person is in a legal relationship and, as a participant in this legal relationship, has an idea not only of the scope of his or her rights, but also of the scope of the rights of other participants in this legal relationship and the procedure for their acquisition and

implementation; the person is not entering into this legal relationship for the first time, or this legal relationship is of a long-term nature, or the person is a participant in other similar legal relationships)

The CCC SC considered the case upon the claim of PERSON_1 against PERSON_2, PERSON_3, PERSON_4 regarding the recognition of the contract as invalid.

CIRCUMSTANCES OF THE CASE

On August 4, 2015, the Desnianskyi District Court passed a judgment in absentia, by which PERSON_1's claim for debt collection was satisfied and the debt was collected in favour of PERSON_1 from PERSON_2. The state executor adopted a resolution on the opening of enforcement proceedings, on the seizure of the debtor's property and the announcement of a ban on its alienation under enforcement proceedings.

On March 25, 2016, PERSON_5, acting under a power of attorney in the interests of PERSON_2, filed an application with the Desnianskyi District Court of Kyiv for review of the decision in absentia, which the Desnianskyi District Court of Kyiv granted, set aside the decision in absentia of the Desnianskyi District Court of Kyiv of August 04, 2015 in the case of PERSON_1's claim against PERSON_2 for debt collection, and scheduled a hearing in the general procedure.

On May 10, 2016, the Desnianskyi District Court of Kyiv granted the application of PERSON_1's representative for interim relief in a civil case against PERSON_2 for debt collection. As a result, a 1/3 share of PERSON_2's apartment was seized.

On April 28, 2016, PERSON_2, on the one party, and PERSON_3, on the other party, entered into an apartment share donation contract, according to which PERSON_2 donated 1/3 of the apartment to PERSON_3.

Despite the existence of a seizure order from the Desnianskyi District Court of Kyiv on May 10, 2017, which should have prevented the conclusion of the donation agreement for 1/3 of the apartment, it was not in fact implemented.

On June 26, 2018, PERSON_3 and PERSON_4 entered into an agreement for the sale and purchase of a share in the right of joint fractional ownership of an apartment, respectively. PERSON_3 transferred a 1/3 share in the right of joint fractional ownership of the apartment to PERSON_4.

The plaintiff alleged that PERSON_2 misled the court by abusing his rights under the Civil Procedural Code of Ukraine and transferred 1/3 of the apartment to his mother, PERSON_3, in order to avoid civil liability and prevent the enforcement of the judgment for the recovery of a monetary debt from him by selling his property.

The plaintiff indicated that the contract on the donation of 1/3 of the apartment, concluded on April 28, 2016 between PERSON_2 and PERSON_3, contained signs of fictitiousness, was not aimed at the actual occurrence of legal consequences, had been concluded with the aim of preventing the execution of the judgment, and therefore should be declared invalid.

ASSESSMENT OF THE COURT

Interpretation of Article 234 of the Civil Code of Ukraine states that in order to recognize a transaction as fictitious, it is necessary to establish the intent of all parties to the transaction. If property was transferred for the execution of the transaction, such a transaction may not be classified as fictitious. Therefore, a fictitious transaction is characterized by the fact that the parties make such a transaction only *pro forma*, knowing in advance that it will not be executed; when making a fictitious transaction, the parties have other goals than those provided for in the transaction.

Actions intended to harm another person, as well as the abuse of rights in any form, are prohibited according to the part 3 of Article 13 of the Civil Code of Ukraine.

In its Resolution dated July 3, 2019 in case No. 369/11268/16-ц the Grand Chamber of the Supreme Court concluded that **"the plaintiff has the right to apply to the court with a claim to declare the contract invalid as one aimed at avoiding the foreclosure on the debtor's property, on the basis of the general principles of civil legislation (paragraph 6 of Article 3 of the Civil Code of Ukraine) and the inadmissibility of the abuse of rights (Part 3 of Article 13 of the Civil Code of Ukraine), and to refer to a special norm that provides for the grounds for recognizing the transaction as invalid, which may be represented by the grounds provided for in Article 234 the Civil Code of Ukraine, as well as another, for example, the basis provided for in Article 228 of the Civil Code of Ukraine"**.

The court of appeal found that the disputed donation agreement between PERSON_2 and PERSON_3 aimed to transfer ownership of real estate to conceal it from the enforcement of a court decision to recover money from PERSON_2 in the future. Therefore, the court reasonably concluded that the donation agreement was invalid. However, **the court of appeal erroneously held that this agreement was fictitious because PERSON_3 had registered ownership of 1/3 of the apartment and had alienated this property under a sale and purchase agreement**. Thus, the court of appeal's resolution regarding the satisfied claims for invalidation of the donation agreement should be revised in the reasoning part.

In the statement on the increase of claims, PERSON_1 requested the application of the restitution procedure as a means of civil protection, i.e. the return of the property of the 1/3 share in the right of joint fractional ownership of the apartment ADDRESS_2 to the original owner PERSON_2. PERSON_1 indicated that on June 26, 2018, PERSON_3 and PERSON_4 had entered into contract of sales and purchase of a share in the right of joint fractional ownership of an apartment and PERSON_4 could not be considered a *bona fide* purchaser.

Private law instruments should not be used by participants in civil transactions to avoid paying a debt (money, losses, damage) or the execution of a judgment on debt collection (money, losses, damage) that has entered into legal force. The abuse of the right and the use of private law instruments contrary to its purpose are manifested in the fact that: a person (persons) "used the right for evil"; there are negative consequences (of various manifestations) for other persons (negative consequences represent a certain state into which other subjects fall, whose rights are directly related to the rights of the person who abuses them; this state does not satisfy other subjects; the exercise of their rights lacks

certain facts and/or conditions; the occurrence of these facts/conditions directly depends on the actions of another person, the other person may be in a specific legal relationship with these persons who "suffer" from the abuse of his/her right, or not); the legal status of the person/persons is taken into account (the person is in a legal relationship and, as a participant in this legal relationship, has an idea not only of the scope of his or her rights, but also of the scope of the rights of other participants in this legal relationship and the procedure for their acquisition and implementation; the person is not entering into this legal relationship for the first time, or this legal relationship is of a long-term nature, or the person is a participant in other similar legal relationships).

The way to protect civil rights and interests may be, in particular, the restoration of the situation that existed before the violation (paragraph 4, part 2, Article 16 of the Civil Code of Ukraine).

In the case under review, it is obvious that the participants in civil relations (the parties to the contract dated June 26, 2018 of sale and purchase of a share in the right of joint fractional ownership of an apartment) "used the right for evil", since the civil law tools (the sales contract dated June 26, 2018) were used by participants to make it impossible to foreclose on PERSON_1's share and caused such negative consequences for him.

The panel of judges believes that the method of protection chosen by PERSON_1 (restoration of the situation that existed before the violation, by returning a share in the right of joint partial ownership of PERSON_2) is provided for by paragraph 4, part 2, Article 16 of the Civil Code of Ukraine and is effective for protecting her violated right/interest in disputed legal relations.

In such circumstances, the courts incorrectly applied the norms of substantive law in the part of the claims for the application, as a method of civil protection, of the restitution procedure, namely, the return of the property of a share in the amount of 1/3 in the right of joint partial ownership of PERSON_2's apartment. Therefore, the court decisions in this regard must be overturned, and a new decision must be made to grant this claim.

The Resolution of the SC GC dated February 10, 2021 in case No. 754/5841/17: <https://reyestr.court.gov.ua/Review/94938438>.

2. Application of the fraudulent construction to individual contracts

A civil law contract (including a donation contract) may not be used by participants in civil relations to avoid paying a debt or executing a judgment (including a verdict).

A debtor (donor) who alienates property on the basis of a gratuitous contract in favour of his mother after the bank has filed a claim against him for debt collection is clearly acting in bad faith and abusing his rights in relation to the creditor, since he concluded a donation contract that violates the property interests of the creditor and is directed to prevention of foreclosure on the debtor's property. Therefore, the legal system cannot ignore such actions that, although they do not violate specific mandatory norms, are manifestly unfair and amount to an abuse of the law

The CCS SC considered the case upon the claim of PIRAEUS BANK ICB JSC against PERSON_1, PERSON_2 regarding invalidation of the apartment donation contract, and adopted a resolution in which it stated the following.

CIRCUMSTANCES OF THE CASE

PIRAEUS BANK ICB JSC and Creative PJSC concluded a loan agreement. To ensure compliance with the terms of the agreement, PIRAEUS BANK ICB JSC and PERSON_1 entered into a surety agreement.

The terms of the loan agreement were not fulfilled by the borrower, as a result of which the bank applied to court with a claim against the guarantor for collection of the debt under the loan agreement; according to the judgment, PERSON_1 was charged for the debt under the loan agreement in favour of PIRAEUS BANK ICB JSC.

A month after the civil case proceedings for the collection of credit debt from PERSON_1 began, PERSON_1 and his mother, PERSON_2, concluded a contract of donation for an apartment.

In the bank's opinion, the concluded transaction is fictitious and violates its legal rights, since the actions of the parties during its conclusion were not aimed at the actual occurrence of legal consequences stipulated by the donation contract, but at the fictitious transfer of ownership of the apartment, with the aim of concealing this property from the following forfeiture for the execution of the judgment on the recovery of funds from the guarantor, which is the basis for declaring the donation contract invalid in accordance with Article 234 of the Civil Code of Ukraine.

ASSESSMENT OF THE COURT

A civil law contract (including a donation contract) may not be used by participants in civil relations to avoid paying a debt or executing a judgment (including a verdict).

The debtor (donor) who alienates property on the basis of a gratuitous contract in favour of his mother after the bank has filed a debt collection lawsuit against him, is clearly

acting in bad faith and abusing his rights in relation to the creditor, since he concluded a donation contract that violates the creditor's property interests and is directed to prevention of foreclosure on the debtor's property. Therefore, the legal system cannot ignore such actions that, although they do not violate specific mandatory norms, are manifestly unfair and amount to an abuse of the law.

As a result, it is possible to invalidate an agreement aimed at avoiding foreclosure on the debtor's property on the basis of the general principles of civil law (paragraph 6 of Article 3 of the Civil Code of Ukraine) and the inadmissibility of abuse of law (part three of Article 13 of the Civil Code of Ukraine).

When deciding on the existence of grounds for invalidating a transaction as a result of the conclusion of a contract the content of which contradicts the Civil Code of Ukraine, the Supreme Court took into account that: 1) the defendant alienated the property after a lawsuit was filed against him for debt collection; 2) the property was alienated on the basis of a gratuitous contract; 3) the property was alienated in favour of a close relative; 4) after alienation of the disputed property, the defendant has no other property, at the expense of which he can be liable for his obligations to the creditor.

In the opinion of the Supreme Court, the totality of the given circumstances proves the fact that the defendant acted in bad faith, abusing his civil rights to the detriment of the rights of other persons, since the alienation of his property took place in order to avoid the creditor's foreclosure on his property as a debtor.

According to the conclusions of the Supreme Court, any transaction committed by the debtor during the period of his obligation to repay the debt to the creditor, as a result of which the debtor ceases to be solvent, should be questioned in terms of his good faith and acquires the characteristics of a fraudulent transaction.

At the same time, the fact that the transaction with a third party, according to which the debtor alienated the property, was actually executed, does not exclude the fact that it is aimed at avoiding foreclosure on the debtor's property and, accordingly, can be declared invalid on the basis of the general principles of civil legislation.

The Supreme Court took into account that at the time of the gratuitous alienation of the disputed property, the credit obligation was considered overdue, its proper performance did not take place, and therefore the right to demand the main debtor's guarantor arose due to its insolvency.

In addition, the Supreme Court took into account that by the ruling of the commercial court in the case on bankruptcy of Creative PJSC, proceedings had been initiated, the debtor's liquidation procedure had been started in the case.

The Supreme Court also took into account that the plaintiff's indication of a certain legal norm, given in the justification of the claim, is not determinative when the court decides on the issue by which law it should be governed during the resolution of the dispute, since the grounds of the claim are recognized as the circumstances by which the plaintiff substantiates its claims, in this case – the conclusion of the contract by the defendant in order to avoid the creditor's foreclosure on his property as a debtor.

The Resolution of the CCC SC of July 24, 2019 in case no. 405/1820/17: <https://reyestr.court.gov.ua/Review/83387308>.

An agreement made to the detriment of creditors (fraudulent agreement) may be either a paid or gratuitous agreement.

The application of the "fraudulent" construction to a paid civil law contract has certain peculiarities, which are manifested in the circumstances that allow a paid contract to be qualified as one made to the detriment of the creditor. These circumstances include, in particular, the time of the conclusion of the agreement; the counterparty with whom the debtor enters into the disputed agreement (e.g., a relative of the debtor, a stepson of the debtor, a related or affiliated legal entity); the price (market/non-market), whether or not the debtor's counterparty paid the price

The Civil Cassation Court of the Supreme Court considered the case on the claim of PERSON_1 against PERSON_2, PERSON_3, PERSON_4 on invalidation of the contract and issued a resolution stating the following.

CIRCUMSTANCES OF THE CASE

PERSON_1 and PERSON_4 entered into a loan agreement under which he transferred USD 250,000.00, which was confirmed by a written receipt.

Due to the borrower's failure to comply with the terms of the agreement, in March 2013 he filed a lawsuit against PERSON_4 and PERSON_2 (PERSON_4's husband) to recover the funds they had received for family needs. The court ruled in his favour and recovered the debt from the defendants jointly and severally.

However, PERSON_2 re-registered the ownership of the apartment he owned to PERSON_3 (PERSON_4's son from a previous marriage) by entering into a sale and purchase agreement.

The plaintiff stated that, in order to avoid paying the debt, PERSON_2, acting in bad faith and abusing the law, entered into a fictitious transaction.

The district court dismissed the claim on the grounds that the fictitiousness of the sale and purchase agreement had not been proven, since the disputed agreement was a sale and purchase agreement and therefore a compensation agreement, not a donation agreement, and the form of the agreement to sell the property itself did not indicate a transfer of ownership to avoid the execution of the court's decision to recover the debt.

ASSESSMENT OF THE COURT

An agreement made to the detriment of creditors (fraudulent agreement) may be either a paid or gratuitous agreement. The application of the "fraudulent" construction in a paid civil law contract has certain peculiarities, which are manifested in certain circumstances that allow a paid contract to be qualified as one made to the detriment of the creditor. These circumstances

include, in particular, the time of the conclusion of the agreement; the counterparty with whom the debtor enters into the disputed agreement (e.g., a relative of the debtor, a stepson of the debtor, a related or affiliated legal entity); the price (market/non-market), whether or not the debtor's counterparty paid the price.

After lodging an appeal against the local court's decision, the plaintiff filed a new motion to obtain evidence from the private notary, including a copy of the disputed sale and purchase agreement, on the grounds that he was unable to obtain it himself.

However, in violation of the procedural law, the court of appeal did not consider the motion. In addition, the court of appeal did not directly examine the disputed transaction at issue.

The court of appeal did not take into account that a contract concluded to the detriment of creditors (a fraudulent contract) can be either a paid or a gratuitous contract; it did not examine the plaintiff's arguments that a civil law contract (including a sale and purchase agreement) cannot be used by civil parties to avoid payment of a debt. Thus, the Supreme Court overturned the decision of the court of appeal and remanded the case to the court of appeal for a new trial.

The Resolution of the CCC SC of October 7, 2020 in case No. 755/17944/18: <https://reyestr.court.gov.ua/Review/92315178>.

A vehicle purchase and sale agreement under which a debtor (legal entity) sells property (vehicles) to its participant at a price below the market value after a debt collection claim was filed against it is considered fraudulent. Such a debtor acts in manifest bad faith and abuses his rights by entering into contested agreements that infringe the creditor's property interests and are aimed at preventing the enforcement of the debtor's property

The CCC SC considered the case of PERSON_1 against Avtobastion LLC, PERSON_2 on the invalidity of contracts for the sale and purchase of vehicles and issued the following decision.

CIRCUMSTANCES OF THE CASE

On June 13, 2016, the Brody District Court of the Lviv region ruled that Avtobastion LLC should pay, inter alia, in favour of PERSON_1, compensation for property damage caused by damage to the car, material damage to the victim's health and compensation for non-pecuniary damage.

Avtobastion LLC sold vehicles (two truck tractors and a trailer) to PERSON_2 on the basis of sale and purchase agreements. As of the date of the agreements, PERSON_2 was a member of Avtobastion LLC.

As of the date of the court's decision, there were no funds in the company's account, and therefore the court's decision remained unenforced. PERSON_1 asked the court to set aside the

contracts for the sale of the vehicles on the grounds that the property had been sold to avoid the enforcement of a court order.

The court of first instance, whose decision was upheld by the appellate court, dismissed the claim because at the time of the disputed agreements, there was no decision to recover material and property damage from the company. By entering into the agreements, the company exercised its legal rights as a vehicle owner.

ASSESSMENT OF THE COURT

An agreement made to the detriment of creditors (fraudulent agreement) may be either a paid or gratuitous agreement. The application of the "fraudulent" construction to a paid civil law contract has certain peculiarities, which are manifested in the circumstances that allow a paid contract to be qualified as one made to the detriment of the creditor. These circumstances include, in particular, the time of the conclusion of the agreement; the counterparty with whom the debtor enters into the disputed agreement (e.g., a relative of the debtor, a stepson of the debtor, a related or affiliated legal entity); the price (market/non-market), whether or not the debtor's counterparty paid the price.

In the case at hand: it is obvious that the parties to the vehicle sale and purchase agreements "used the right for evil", as the civil law instruments (the disputed agreements) were used to prevent the enforcement of the debtor's property; the circumstances established by the courts allow us to conclude that the disputed agreements are fraudulent, i.e. made to the detriment of the creditor.

Circumstances that make it possible to classify the disputed agreements as fraudulent include:

1) **the time of entering into the agreements** (after the commencement of proceedings, denial of interim relief and before the first court hearing in the case of recovery of funds);

2) **the counterparty with which the debtor entered into the disputed agreements** (Avtobastion LLC entered into agreements with a person who was a member of the company at the time of the agreement);

3) **the price in the disputed agreements** (a truck tractor was sold for UAH 15,000; another truck tractor for UAH 100; a van trailer for UAH 100);

4) **a debtor** (Avtobastion LLC) who alienates a vehicle in favour of its member after filing a debt collection claim against it acts in obvious bad faith and abuses its rights, as it has entered into disputed agreements that violate the creditor's property interests and are aimed at preventing the enforcement of the debtor's property.

In these circumstances, the courts wrongly concluded that PERSON_1's claims should be dismissed.

A creditor whose claim arose later, even if its claim is "subject to" a condition or term, can challenge fraudulent payment agreements.

In a fraudulent payment agreement, the debtor's counterparty may be another creditor whose right to claim arose earlier. Accordingly, in this case, a fraudulent agreement is concluded by the debtor in order to avoid or make impossible the payment of the debt (funds, losses, damages), and by his counterparty (another creditor) in order to create advantages for one creditor over another, which is manifestly unreasonable and contrary to the principle of good faith.

The CCC SC considered the case of Dniprozvjazok PJSC against Tenancy Group LLC, PERSON_1, Rent 3000 LLC on invalidity of the sale and purchase agreement and cancellation of the state registration and issued the following decision.

CIRCUMSTANCES OF THE CASE

The commercial court upheld the claim of Dniprozvjazok PJSC against Tenancy Group LLC for debt recovery.

In order to enforce the judgment of the commercial court, Dniprozvjazok PJSC presented the writ of execution to a private enforcement officer, who opened enforcement proceedings.

While reviewing the materials of the enforcement proceedings, Dniprozvjazok PJSC became aware of circumstances that impede the proper execution of the above court decision, namely that Tenancy Group LLC sold non-residential premises to PERSON_1, who, in turn, being a member of Rent 3000 LLC, contributed the above real estate to the charter capital of Rent 3000 LLC.

Thus, Tenancy Group LLC entered into the sale and purchase agreement for the non-residential premises after incurring a debt to Dniprozvjazok PJSC in July 2018, and therefore, at the time of entering into the sale and purchase agreement, the defendant pursued the sole purpose of avoiding the performance of its property obligations. The sale of real estate makes it impossible to enforce a court decision. The said non-residential premises were the only property of Tenancy Group LLC that could be used to repay the debt to the plaintiff.

In dismissing the claim, the court of appeal noted that the disputed agreement for the sale and purchase of non-residential premises was concluded between Tenancy Group LLC and PERSON_1 on July 18, 2018. Dniprozvjazok PJSC filed a pre-trial claim against the defendant Tenancy Group LLC for payment of the debt under the lease agreement almost three months after the disputed agreement was entered into, and filed a lawsuit with the Kyiv Commercial Court almost five months after the disputed agreement was entered into. Therefore, at the time of entering into the disputed sale and purchase agreement, Dniprozvjazok PJSC had no claim against Tenancy Group LLC under the lease to recover the debt for improper performance of the lease.

ASSESSMENT OF THE COURT

The court of appeal did not take into account that private law instruments (in particular, the conclusion of a fraudulent contract) should not be used by participants in civil transactions to avoid or make impossible the payment of a debt (money, loss, damage) or the enforcement of a court decision on a debt (money, loss, damage) that has entered into force; the application of the "fraudulent" construction in a paid civil law contract has certain peculiarities, which are manifested in circumstances that allow qualifying a paid contract as one concluded to the detriment of the creditor. These circumstances include, in particular, the time of the conclusion of the agreement; the counterparty with whom the debtor enters into the disputed agreement (e.g., a relative of the debtor, a stepson of the debtor, a related or affiliated legal entity); the price (market/non-market), whether or not the debtor's counterparty paid the price.

The court of appeal failed to recognise that a creditor whose claim arises later, even if its claim is 'subject to' a condition or term, can challenge fraudulent payment agreements. In a fraudulent payment agreement, the debtor's counterparty may be another creditor whose right to claim arose earlier. Accordingly, in this case, a fraudulent agreement is concluded by the debtor in order to avoid or make impossible the payment of the debt (funds, losses, damages), and by his counterparty (another creditor) in order to create advantages for one creditor over another, which is manifestly unreasonable and contrary to the principle of good faith.

In addition, according to the analysis of the case file: in the court of first instance, PERSON_1 did not deny knowledge of the existence of the debt at the time of the disputed sale and purchase agreement; in its response to the claim, Rent 3000 LLC stated that PERSON_1 was a creditor of Tenancy Group LLC; and the court decision recovered the debt under the loan agreement from Tenancy Group LLC in favour of PERSON_1.

The court of appeal did not examine these circumstances and therefore came to a premature conclusion to dismiss the claim for invalidity of the sale and purchase agreement for non-residential premises concluded between Tenancy Group LLC and PERSON_1 (public building, letter "K")

The Resolution of the CCC SC of April 12, 2023 in case No. 754/18852/21: <https://reyestr.court.gov.ua/Review/110175637>.

A court decision recognizing an agreement as valid when the parties fail to comply with the requirement of its notarization "cures" only such a defect as the lack of notarization of the agreement.

Accordingly, the possibility of nullifying an agreement which was recognized as valid due to the lack of its notarization as such, made to the detriment of the creditor (fraudulent agreement), is not excluded.

The CCC SC considered the case on the claim of PERSON_1 against PERSON_2, PERSON_3, the third party - the Municipal Enterprise "Rivne City Bureau of Technical Inventory", on invalidation of the transaction and cancellation of state registration, and issued a resolution stating the following.

CIRCUMSTANCES OF THE CASE

The court found PERSON_2 guilty of committing a crime under part four of Article 190 of the Criminal Code of Ukraine with a sentence of imprisonment and confiscation of property; the civil claim of PERSON_1 against PERSON_2 for damages was satisfied.

At the same time, PERSON_2 and PERSON_3 entered into a simple written agreement for the sale and purchase of the production facilities.

The court's decision granted PERSON_3's claim against PERSON_2 to recognize the validity of the sale and purchase agreement for the production facility and to recognize ownership of the facility.

In this regard, the plaintiff sought to invalidate the sale and purchase agreement (as fictitious) concluded between the defendants in simple written form and to cancel the registration of the ownership of the production facility.

In this case, the court of first instance invalidated the sale and purchase agreement for a production facility because it was seized at the time of the agreement.

The court of appeal overturned the decision of the court of first instance and dismissed the claim finding that the agreement had been validated in another proceeding, the terms of the agreement had been fulfilled, and therefore the agreement was not fictitious.

ASSESSMENT OF THE COURT

An agreement made to the detriment of creditors (fraudulent agreement) may be either a paid or gratuitous agreement. The application of the "fraudulent" construction to a paid civil law contract has certain peculiarities, which are manifested in the circumstances that allow a paid contract to be qualified as one made to the detriment of the creditor.

Interpretation of Article 220 of the Civil Code of Ukraine indicates that a court decision recognizing an agreement as valid when the parties fail to comply with the requirement of its notarization "cures" only such a defect as the lack of notarization of the agreement. Accordingly, the possibility of nullifying an agreement recognized as valid due to the lack of its notarization as such, made to the detriment of the creditor (fraudulent agreement), is not excluded.

Private law instruments (in particular, the recognition of an agreement as valid due to the absence of its notarization) should not be used by participants in civil transactions to avoid payment of a debt (funds, losses, damages) or the enforcement of a court decision on the recovery of a debt (funds, losses, damages) that has entered into force.

The Supreme Court overturned the decision of the court of appeal, and amended the decision of the court of first instance to invalidate the contract, setting out its reasoning in the wording of this decision.

The Resolution of the CCC SC of November 18, 2020 in case No. 569/6427/16: <https://reyestr.court.gov.ua/Review/93053362>.

3. One-sided transaction as a fraudulent transaction

A transaction made to the detriment of creditors (fraudulent transaction) can be a one-sided, two-sided or multi-sided transaction.

The use of the "fraudulent" construction in a one-sided transaction has certain specifics, which are manifested in circumstances that allow qualifying a one-sided transaction as one made to the detriment of the creditor. Such circumstances include, in particular, the fact that the one-sided transaction makes it impossible to foreclose on the debtor's property or reduces the amount of property.

The issuance of a power of attorney cannot be qualified as a transaction made to the detriment of the creditor (fraudulent transaction)

The CCC SC considered the case on the claim of PERSON_1 against PERSON_2, PERSON_3, a private notary of the Kyiv City Notary District on the invalidation of the power of attorney, and issued a resolution stating the following.

CIRCUMSTANCES OF THE CASE

The Makariv district court of the Kyiv region is considering a civil case brought by PERSON_1 against PERSON_2, PERSON_3, PERSON_4, the subject of which is the obligation of PERSON_2 to make payments under the contract of sale and purchase of a share in the authorized capital of Camilla Trading House LLC.

At the same time, PERSON_2 issued a power of attorney to PERSON_3, authorizing her to, among other things, dispose of the property he owned, on the basis of this power of attorney, nine agreements for donation of land plots and apartments owned by PERSON_2 were concluded between PERSON_3 and PERSON_5 in February-May 2015.

The plaintiff asked the court to invalidate the power of attorney by which the attorney on behalf of the debtor PERSON_3 had donated his property (land and apartments) to a third party. PERSON_1 considered the said power of attorney to be fictitious, since its sole purpose was to allow the debtor to evade fulfillment of civil law obligations.

ASSESSMENT OF THE COURT

A transaction made to the detriment of creditors (fraudulent transaction) can be a one-sided, two-sided or multi-sided transaction. The use of the "fraudulent" construction in a one-

sided transaction has certain specifics, which are manifested in circumstances that allow qualifying a one-sided transaction as one made to the detriment of the creditor. Such circumstances include, in particular, the fact that the one-sided transaction makes it impossible to foreclose on the debtor's property or reduces the amount of property.

In the case at hand, the plaintiff pointed out that the contested power of attorney was used to conclude transactions for the alienation of the defendant's real estate in order to avoid foreclosure on this property, which violated the rights of PERSON_1 as a creditor of the defendant.

The plaintiff attributed the violation of his rights as a creditor to the land and apartment donation agreements, as a result of which PERSON_2 alienated property that could be enforced through the enforcement of a court decision.

In addition, no claims have been filed to invalidate the land and apartment donation agreements; the defendant's issuance of the disputed power of attorney cannot be qualified as a transaction made to the detriment of the creditor.

The Supreme Court held that the claim to set aside the disputed power of attorney was an ineffective remedy and should be dismissed on that ground. However, the courts dismissed the claims for lack of substantiation, and therefore, the reasoning of the court decisions was amended.

The Resolution of the CCC SC of February 24, 2021 in case No. 757/33392/16: <https://reyestr.court.gov.ua/Review/95213197>.

4. Fraudulent practices in executing a marriage contract

Spouses who agree in their prenuptial agreement not to apply the provisions of Article 60 of the Family Code of Ukraine to the property acquired by them during the marriage after the loan repayment or debt collection claim has become due, act in obvious bad faith and abuse their rights against the creditor, since such an agreement is aimed at preventing the foreclosure of the debtor's property or reducing the amount of the debtor's property

On September 06, 2023, the CCC SC considered the case on the claim of PERSON_1 against PERSON_2, PERSON_3 to invalidate the marriage contract.

CIRCUMSTANCES OF THE CASE

The defendants were officially married from 1993 to June 2019.

According to the receipt, PERSON_2 borrowed money from PERSON_1, which he was obliged to return by March 31, 2019.

On March 18, 2019, PERSON_1 and PERSON_2 entered into a loan agreement, under which the loan was to be repaid no later than June 18, 2019.

In April 2019, PERSON_2 and PERSON_3 entered into a prenuptial agreement.

According to paragraphs 2 and 3 of the prenuptial agreement, the wife owns an apartment, two plots of land, an unfinished construction project, and a garage box as her personal private property, while the husband owns all other property registered in his name as his personal private property.

The plaintiff believed that the defendants entered into the prenuptial agreement to prevent him from satisfying his claims as a recovering party at the expense of property seized in other lawsuits. At the time they entered into the prenuptial agreement, the defendants were aware of the debt and the lawsuit to collect the debt from them, which could be repaid from the property, and were aware that the performance period under one of the loan agreements had already expired and that the other was about to expire. The defendants intentionally and concertedly performed a fictitious divorce and entered into a fictitious marriage contract in order to make it impossible to enforce the court's decision to collect the debt and restore PERSON_1's violated rights.

ASSESSMENT OF THE COURT

Article 60 of the Family Code of Ukraine establishes the principle of joint ownership of marital property.

The parties to a marriage contract may agree not to apply the provisions of Article 60 of the Family Code of Ukraine to property acquired by them during the marriage. In this case, the property acquired during the marriage will belong to each of the spouses on the basis of private property (separate property).

The prenuptial agreement as a private legal category, being a universal regulator between the

parties to private relations, is intended to regulate private relations and should be aimed at establishing, changing or terminating private rights and obligations. Instruments of private law (in particular, the conclusion of a marriage contract, which does not regulate civil relations and does not establish, modify or terminate civil rights and obligations) should not be used by participants in civil transactions to avoid or make impossible the payment of a debt (funds, losses, damages) or the enforcement of a court decision on the recovery of a debt (funds, losses, damages) that has entered into force. Therefore, the legal order cannot ignore such actions which, while not in violation of specific preemptory norms, are obviously unfair and amount to abuse of law.

In this case, the courts found that PERSON_2 was obligated to PERSON_1 to repay the loan at the time the disputed prenuptial agreement was entered into.

In dismissing the claim, the court of first instance reasoned that the disputed agreement was not fictitious and therefore there were no grounds to invalidate it.

The Supreme Court pointed out that **a prenuptial agreement can also be an agreement made to the detriment of the creditor (fraudulent agreement)**. The application of the "fraudulent" construction when concluding a prenuptial agreement has certain peculiarities, which are manifested in the circumstances that allow qualifying such an agreement as one made to the detriment of the creditor. Such circumstances, in particular, include: the moment of entering into the prenuptial agreement; the fact that the prenuptial agreement makes it impossible to foreclose on the debtor's property or reduces the amount of the debtor's property (for example, the spouses' agreement not to extend the provisions of Article 60 of the Family Code of Ukraine to the property acquired during the marriage).

Spouses who agree in their prenuptial agreement not to apply the provisions of Article 60 of the Family Code of Ukraine to the property acquired by them during the marriage after the loan repayment or debt collection claim has become due, act in obvious bad faith and abuse their rights against the creditor, since the disputed agreement is aimed at preventing the foreclosure of the debtor's property or reducing the amount of the debtor's property.

In such circumstances, the court of appeal made a premature conclusion that the disputed prenuptial agreement was not fraudulent, i.e., committed to the detriment of the creditor PERSON_1. Therefore, the decision of the court of appeal should be reversed and the case should be remanded to the court of appeal for retrial.

The Resolution of the CCC SC of August 06, 2023 in case No. 755/3563/21:
<https://reyestr.court.gov.ua/Review/113396036>.

5. Other fraudulent constructions

Parties to civil relations may not, at the level of a particular agreement (including a settlement agreement), classify a particular agreement as invalid (void or contested), determine the legal consequences of a void transaction, or agree on the application of restitution. Only the legal consequences of the disputed transaction may be changed by agreement of the parties. By its very nature, the use of the nullity and/or restitution construction for purposes other than the protection of civil rights and interests is inadmissible.

Private law tools (in particular, approval of a settlement agreement with restitution, invalidation of an act) should not be used by participants in civil transactions to avoid or make it impossible for the debtor to pay the debt or enforce a court decision on debt collection. At the same time, if private law instruments are not used to protect civil rights and interests, but to avoid payment of the debt by the debtor or enforcement of a court decision on debt collection, the court decision affects the rights and/or interests of the creditor

On October 27, 2021, the CCC SC considered the case of PERSON_1 and PERSON_2 against PERSON_3 and PERSON_4 for the annulment of the sale and purchase agreement and the state certificate on the ownership of the land plot.

CIRCUMSTANCES OF THE CASE

The parties in the case filed a settlement agreement with the court, in which they agreed to void the purchase and sale agreement for a residential building entered into by PERSON_1, PERSON_2, and PERSON_3. The state certificate on ownership of the land plot issued by PERSON_3 on the basis of the decision of the Kolomyia City Council is declared invalid. The plaintiffs are to be returned ownership of the house and land plot in the following proportions: PERSON_2 - 39/100 parts, PERSON_1 - 61/100 parts, as a form of restitution. The defendants' children and grandson retain the right to live in the house for three years from the date of signing the settlement agreement. The plaintiffs waived all claims of a property and non-property nature against the defendants. Plaintiffs gave PERSON_3 the originals of all existing promissory notes signed by PERSON_4 and PERSON_3.

The local court dismissed the case, canceled the seizure of the residential building, and recognized the settlement agreement of the parties to the case, noting that the settlement agreement did not contradict the requirements of the law and did not violate the rights and legitimate interests of other citizens and the state.

Halytska Trading Company LLC, as a creditor of PERSON_4, filed an appeal because the decision was made without taking into account the property interests of the LLC as a creditor.

The court of appeal dismissed the appeal of the representative of Halytska Trading Company LLC against the decision of the district court approving the settlement agreement, based on the fact that Halytska Trading Company LLC had no violated subjective right or property interest, since the dispute did not resolve the issue of its rights and obligations.

ASSESSMENT OF THE COURT

An analysis of paragraph 3 of part one of Article 362 of the Civil Procedural Code of Ukraine in the version in force at the time of the challenged court decision leads to the conclusion that this provision defines the circle of persons who have the procedural right to appeal a court decision and who are divided into two groups - participants in the case and persons who did not participate in the case, but the court decision affects their rights, interests and/or obligations. If an appeal is filed by a person who was not a party to the case and the court of appeal finds that the court's decision did not resolve the issue of such person's rights, freedoms, interests and/or obligations, the appeal shall be dismissed and the decision of the court of first instance shall not be reviewed on its merits. If private law instruments are used not to protect civil rights and interests, but for non-fulfillment of public duties, release of property from arrest in public relations, or creation of a preliminary court decision for public relations, the court decision concerns the rights, interests and/or duties of the relevant state body designed to protect the interests of the state in the relevant relations.

In the present case, the court of appeal, in concluding the appeal proceedings, considered that Halytska Trading Company LLC did not have a violated subjective right or property interest, since the dispute did not resolve the issue of its rights and obligations. At the same time, justifying its right to appeal the decision of the court of first instance, Halytska Trading Company LLC pointed out that the court of first instance issued the decision without taking into account the property interests of the creditor in accordance with the decision of the Commercial Court of the Ivano-Frankivsk region dated August 31, 2011, which entered into force, PERSON_4 is the debtor of Halytska Trading Company LLC.

The court of appeal did not take into account that the invalidity of a contract, as a category of private law, is intended to prevent, suppress or restore violations of civil rights and interests. Parties to civil relations may not, at the level of a particular agreement (including a settlement agreement), classify a particular agreement as invalid (void or contested), determine the legal consequences of a void transaction, or agree on the application of restitution. Only the legal consequences of the disputed transaction may be changed by agreement of the parties. By its very nature, the use of the invalidity of an act and/or restitution for purposes other than the protection of civil rights and interests is inadmissible.

The Court of Appeal did not pay attention to the fact that if private law instruments are used not to protect civil rights and interests, but to avoid payment of the debt by the debtor or to enforce a court decision on debt collection, the court decision concerns the rights and/or interests of the creditor.

In such circumstances, the court of appeal did not verify the arguments of the appeal complaint and made an incorrect conclusion about the closure of the appeal proceedings.

The Resolution of the CCC SC of October 27, 2021 in case No. 346/6034/13-ц: <https://reyestr.court.gov.ua/Review/100704340>.

6. The right of a public / private executor to challenge a fraudulent transaction

The absence of a separately defined authority for the executor to file a claim with the court to challenge a fraudulent transaction made by the debtor to the detriment of the creditor should not prevent the creditor from exercising its right to enforce the court decision.

Imposing the burden of returning the debtor's property (inducing the debtor to challenge the fraudulent transaction, i.e. initiating further litigation) on a creditor who has already won a previous court case to recover the amount of debt and legitimately expects the state to take all possible actions to ensure the enforcement of the court decision by the competent authorities, negates the essence of the creditor's constitutional right to judicial protection and contradicts the provisions of Articles 3, 8, parts one and two of Article 55, parts one and two of Article 129-1 of the Constitution of Ukraine.

The power of the executor to file a claim for determining the share of the debtor's property in the property owned jointly with other persons in the course of action proceedings is the power to go to court in the interests of other persons (part two of Article 4, part four of Article 42 of the Civil Procedural Code of Ukraine), including a claim for invalidation of a transaction regarding the debtor's property, which led to the inability to satisfy the claims of the creditor at the expense of such property (challenging a fraudulent transaction)

The Grand Chamber of the Supreme Court considered the case at the request of the Shevchenkivskyi Department of Internal Affairs of the city of Lviv of the Main Territorial Department of Justice in Lviv region, interested parties: PERSON_1 (debtor), PERSON_2 (claimant), PERSON_3, on determining the share of the debtor's property in the property owned jointly with other persons, and issued a resolution in which it stated the following.

CIRCUMSTANCES OF THE CASE

The Shevchenkivskyi Department of Internal Affairs of the city of Lviv of the Main Territorial Department of Justice in Lviv region is currently enforcing a writ of execution issued on April 23, 2013 by the Shevchenkivsky District Court of Lviv to recover from PERSON_1 in favour of PERSON_2 monetary compensation for the property allocated to the plaintiff.

As of February 12, 2019, the debt has not been paid, and the debtor has not taken any measures to pay the debt.

The debtor, PERSON_1, has been in a registered marriage with PERSON_3 since October 09, 2010.

On July 26, 2017, PERSON_3 and PERSON_1 entered into a marriage contract, under which real and movable property subject to state registration, personal property rights acquired during the marriage or to be acquired during the marriage are considered personal private property of the one in whose name they are acquired or registered, and the disposal of such property and personal property rights is carried out by the owner at his or her own discretion and does not require the consent of the other spouse.

According to the information certificate from the State Register of Real Property Rights dated February 12, 2019, PERSON_3 owns the compressor building, letter "D". 1/2 share of this property can be assigned to PERSON_1 based on the equality of shares in the joint ownership, and subsequently sold for the purpose of enforcing the court decision.

In view of the above, the Shevchenkivskyi Department of Internal Affairs of the city of Lviv of the Main Territorial Department of Justice in Lviv region filed a petition with the court to determine the debtor's share of property in the property owned jointly with other persons (joint marital property).

ASSESSMENT OF THE COURT

Pursuant to the provisions of part four of Article 9 of the Law of Ukraine "On Enforcement Proceedings", the conclusion of a transaction with respect to the debtor's property within the period specified in part three of this article, which resulted in the inability to satisfy the claims of the creditor at the expense of such property, is grounds for invalidating such transaction.

A transaction made by the debtor during the period of its obligation to repay the debt to the creditor, as a result of which the debtor ceases to be solvent, should be questioned as to its good faith and acquires the characteristics of a fraudulent transaction as one made by the debtor to the detriment of creditors.

Meanwhile, a fraudulent transaction is entered into by the debtor during the enforcement proceedings in order to withdraw its property from the foreclosure.

Consideration of the submission of a public or private enforcement officer under the rules of Article 443 of the Civil Procedural Code of Ukraine does not provide the parties to the court proceedings with an effective, real opportunity to present their evidence and arguments to the court, as required by paragraph 1, Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the presence of a dispute about law. Therefore, the Grand Chamber of the Supreme Court concluded that Article 443 of the Civil Procedural Code of Ukraine is applicable only in the absence of a dispute about the right.

The executor is entitled to apply to the court to determine the share of the debtor's property in the property owned jointly with other persons, regardless of whether there is no dispute about the right or whether there is one. However, in the latter case, the executor files such a claim in the course of the action proceedings.

In terms of guaranteeing everyone's right to judicial protection at the constitutional level and ensuring that the state enforces a court decision, **the absence of a separately defined authority for the executor to file a claim to challenge a fraudulent transaction made by the debtor to the detriment of the creditor should not prevent the creditor from exercising the right to enforce a court decision.**

Placing the burden of returning the debtor's property (inducing the debtor to challenge the fraudulent transaction, i.e. initiating further litigation) on a creditor who has already won a previous court case to recover the amount of debt and legitimately expects the State to take all possible actions to ensure the enforcement of the court decision by the competent authorities, negates the essence of the creditor's constitutional right to judicial protection and contradicts the

provisions of Articles 3, 8, parts one and two of Article 55, parts one and two of Article 129-1 of the Constitution of Ukraine.

The Law of Ukraine "On Enforcement Proceedings" imposes the obligation to initiate any subsequent court proceedings to enforce a previous court decision on the competent authorities authorized by the State to enforce court decisions, and not on the creditor who legitimately expects the State to properly enforce the final court decision on debt collection.

The authority of the enforcement officer to file a claim for determining the share of the debtor's property in the property owned jointly with other persons in the course of action proceedings is the authority to apply to the court in the interests of other persons (part two of Article 4, part four of Article 42 of the Civil Procedural Code of Ukraine), including a claim for invalidation of a transaction with respect to the debtor's property, which resulted in the inability to satisfy the claims of the creditor at the expense of such property (challenging a fraudulent transaction).

A dispute over the determination of the debtor's share of property in property owned jointly with other persons is a dispute between the debtor and other co-owners of the property. After the opening of proceedings on the claim of the executor to determine the share of the debtor's property in the property owned jointly with other persons, the debtor acquires the status of a plaintiff (paragraph one, part five of Article 56 of the Civil Procedural Code of Ukraine).

In the event of a dispute over the determination of the debtor's share of property in property owned jointly with other persons, the court's resolution of the dispute is not a resolution of a procedural issue, but a resolution of a substantive dispute. Such a dispute may arise, in particular, when, in accordance with part one of Article 368 of the Civil Code of Ukraine, property belongs to two or more persons on the right of joint ownership without determining the shares of each of them in the right of ownership (right of joint ownership).

Such a dispute must be resolved by a court in an action. Therefore, an application for determining the debtor's share of property in joint property in the presence of a dispute filed with the court by the executor, regardless of its name (claim, submission), is inherently a lawsuit. A person who is the alleged co-owner of the debtor's property in such a dispute is a party to the dispute and must be provided with the opportunity to exercise all the rights that the defendant has under the law. Only in this case will the right of such a person to a fair trial, guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, be ensured.

In the case under review, the Shevchenkivskyi Department of Internal Affairs of the city of Lviv of the Main Territorial Department of Justice in Lviv region applied to the court to determine the debtor's share of property in the property that, according to the applicant, the debtor owns jointly with another person - PERSON_3. At the same time, the latter denies that the property belongs to her and the debtor on the right of joint ownership and considers herself the sole owner of the disputed property.

Thus, there is a dispute about the right in this case. Such a dispute is resolved in the action proceedings, and not within the framework of a case in which another dispute between the debtor and the creditor has been resolved, i.e. not in accordance with Section VI "Procedural Issues

Related to the Enforcement of Court Judgments in Civil Cases and Decisions of Other Bodies (Officials)" of the Civil Procedural Code of Ukraine.

Resolution of the Supreme Court of Ukraine dated June 8, 2022 in case No. 2-591/11: <https://reyestr.court.gov.ua/Review/105110382>.

7. Consequences of the invalidity of a fraudulent transaction

Establishing the fraudulent nature of a contract is a sufficient and independent ground for invalidating it and applying the consequences of its invalidity.

The proper way to protect the creditor's right/interest at the request to return the parties to their original state, i.e. restore the situation that existed before the violation (paragraph 4 of part two of Article 16 of the Civil Code of Ukraine), is to return the relevant property to the debtor, and for such return, challenging the following transactions (registration actions) in respect of this property is not required

The CCC SC considered the case on the claim of PERSON_1 and PERSON_2 against PERSON_3, private notary Tymofeeva O. V., IRIS LLC, private notary Pidlisna I. V. on invalidation of contracts of sale and purchase of a residential house with outbuildings and a land plot due to their fictitiousness, return of the parties to the contracts to their original state and cancellation of state registration of rights to real estate, and issued a resolution in which it stated the following.

CIRCUMSTANCES OF THE CASE

PERSON_3 was found guilty under part two of Article 286 of the Criminal Code of Ukraine and sentenced to a penalty, PERSON_3 was charged with compensation for damages in favour of PERSON_1 and PERSON_2. As a result of the accident caused by PERSON_3, PERSON_7, whose parents are the plaintiffs, died.

After the court's verdict came into force, enforcement proceedings were opened, where PERSON_3 is the debtor and PERSON_2 and PERSON_1 are the claimants.

At the time of the accident, PERSON_3 was a private entrepreneur and was engaged in trade in the markets of Kharkiv, owned land plots and two houses.

Two weeks after the accident, PERSON_3 transferred the disputed house with outbuildings and the land plot to VIVAT LLC under a sale and purchase agreement.

By filing a lawsuit, the plaintiffs believed that PERSON_3 had expedited the disposal of his property in order to avoid compensation for the victims, anticipating negative consequences for himself in the event of future enforcement of the court decision by foreclosing on this property, and he aimed to make it impossible or delay compensation for the victims in the future.

ASSESSMENT OF THE COURT

Pursuant to Article 234 of the Civil Code of Ukraine, a fictitious transaction is a transaction

made without the intention of creating the legal consequences that were stipulated by the transaction. A fictitious transaction is recognized by the court as invalid.

The trial court, having analyzed the evidence provided by the parties to the case, assessed the relevance, admissibility, and reliability of each evidence separately, as well as the sufficiency and interconnection of the evidence in their entirety, made reasonable conclusions that the alienation of the residential building and land plot by PERSON_3 took place a few days after the accident that killed the plaintiffs' daughter; the conclusion of the disputed agreements made it impossible to recover funds from PERSON_3 in pursuance of a court verdict by which PERSON_3 was found guilty of committing a crime under part two of Article 286 of the Criminal Code of Ukraine and recovered in favour of PERSON_1 and PERSON_2 UAH 259,200 each in damages; the debtor and related persons - owners and members of VIVAT LLC and IRIS LLC acted in obvious bad faith and abused their rights against the plaintiffs (creditors). Therefore, the legal order cannot ignore such actions, which, although they do not violate specific mandatory rules, are obviously in bad faith and amount to an abuse of law.

In such circumstances, the conclusion of the court of first instance that there are grounds to invalidate the disputed sale and purchase agreement for a residential building with outbuildings and a land plot on the basis of Articles 3, 13, 203, 215 of the Civil Code of Ukraine as a fraudulent agreement to the detriment of creditors is correct.

The court of appeal did not refute these conclusions of the court of first instance, did not take into account the arguments of the plaintiffs and the grounds for their claims, in particular, that according to part three of Article 13 of the Civil Code of Ukraine, actions of a person committed with the intention to harm another person, as well as abuse of law in other forms, are not allowed, and private law instruments should not be used by participants in civil transactions to avoid the execution of a court decision on debt recovery (funds, losses, damage). The fact that PERSON_3 entered into a preliminary property sale and purchase agreement with PERSON_10, and, accordingly, intended to alienate the property before the accident, does not affect the conclusions of the trial court that after the accident, in their legal relations with the parties to this case and by entering into the disputed agreements, the defendants acted in obvious bad faith and abused their rights against the plaintiffs. At the same time, the court of appeal correctly stated that there were no grounds to consider the transactions fictitious, as the circumstances of the case indicate that the purchasers of the real estate took actions to dispose of it.

Therefore, the court of first instance erroneously concluded that the agreements were fictitious. In this case, establishing the fraudulent nature of the agreement is a sufficient and independent ground for invalidating it and applying the consequences of its invalidity.

In addition, the plaintiffs requested to apply the consequences of invalidating the sale and purchase agreement by returning the parties to their original state.

The plaintiff considered such consequences to be the cancellation of the state registration of ownership of the real estate in favor of its acquirers (VIVAT LLC and IRIS LLC), and the court of first instance agreed with this.

At the same time, the court of first instance did not take into account that in the disputed

legal relations and under the established circumstances of the case, **an effective way to protect the creditor's right/interest at the request to return the parties to their original state, i.e. restore the situation that existed before the violation (paragraph 4 of part two of Article 16 of the Civil Code of Ukraine), is to return the relevant property to the debtor and for such return, challenging subsequent transactions (registration actions) in respect of this property is not required.**

Resolution of the CCC SC of May 18, 2022 in case No. 643/15604/17:
<https://reyestr.court.gov.ua/Review/104443478>.

The invalidity of a fraudulent transaction in a non-competitive challenge should guarantee the interests of the creditor(s) "through the possibility of access to the debtor's property", even if it is held by other persons.

State registration of a vehicle, unlike state registration of rights to real estate, does not have a law-making character; the proper way to protect a creditor is to restore the situation that existed before the violation (paragraph 4, part two of Article 16 of the Civil Code of Ukraine), and to return the property to the debtor, challenging subsequent transactions (registration actions) in respect of this property is not required.

The CCC SC considered the case on the claim of PERSON_1 against PERSON_2, PERSON_3, PERSON_4, the Regional Service Center of the Main Service Center of the Ministry of Internal Affairs in Kyiv region, on invalidation of contracts, cancellation of registration and obligation to take actions, and issued a resolution stating the following.

CIRCUMSTANCES OF THE CASE

By the decision of the district court of April 14, 2016 in case No. 638/5995/16-ц, an apartment and three vehicles were seized to secure the claim of PERSON_1 against PERSON_2 for debt collection.

The regional service center imposed restrictions on the registration of the vehicles.

By a court decision dated October 4, 2017 in case No. 638/5995/16-ц, the debt under the loan agreement was recovered from PERSON_2 in favour of PERSON_1.

At the same time, on April 13, 2018, PERSON_2, represented by a power of attorney, and PERSON_3 entered into a vehicle sale and purchase agreement, under which the latter acquired ownership of a PORSCHE PANAMERA.

On April 27, 2018, in pursuance of the decision in case No. 638/5995/16-ц, the senior state enforcement officer issued a decision to open enforcement proceedings and seized all the property of the debtor PERSON_2, including the PORSCHE PANAMERA vehicle.

Subsequently, on May 15, 2018, based on the application of PERSON_3, the above-mentioned car was registered to PERSON_4.

The plaintiff believed that PERSON_2 was aware of the seizure in accordance with the court order, and therefore asked to invalidate the car sale and purchase agreements of April 13, 2018 and May 15, 2018, and cancel the registration of the vehicle.

ASSESSMENT OF THE COURT

Contract voidance as a private law category is designed to prevent or suppress violations of private rights and interests or to restore them. The legal consequences of the invalidity of a transaction include the fact that it does not create legal consequences.

In the resolution of the Grand Chamber of the Supreme Court dated July 03, 2019 in case No. 369/11268/16-ц, it was concluded that the plaintiff has the right to file a claim for invalidation of the agreement as such aimed at avoiding foreclosure on the debtor's property, based on the general principles of civil law (paragraph 6, Article 3 of the Civil Code of Ukraine) and the inadmissibility of abuse of law (part three, Article 13 of the Civil Code of Ukraine), and refer to a special rule providing for the grounds for invalidation of a transaction, which may be either the ground provided for in Article 234 of the Civil Code of Ukraine or another ground, such as the ground provided for in Article 228 of the Civil Code of Ukraine.

The debtor against whom the court decision on recovery of funds was made and enforcement proceedings were initiated is clearly acting in bad faith and abusing its rights against the creditor, since the sale and purchase agreement of April 13, 2018 for the PORSCHE PANAMERA violates the property interests of the creditor and is aimed at preventing the foreclosure of the debtor's property. Therefore, the law and order cannot ignore such actions, which, although they do not violate specific mandatory rules, are obviously unfair and amount to an abuse of law.

The court of appeal found that PERSON_2 acted in obviously bad faith and abused his rights when alienating the vehicle, and therefore the sale and purchase agreement contains signs of fraud; the alienation of the disputed PORSCHE PANAMERA actually took place during the validity of the encumbrance imposed on it.

In such circumstances, the court of appeal reasonably concluded that the disputed sale and purchase agreement of April 13, 2018 should be invalidated.

The cassation appeal's argument that the sale and purchase agreement dated April 13, 2018 was qualified by the court of appeal as fictitious (Article 234 of the Civil Code) is rejected by the cassation court, as the Grand Chamber of the Supreme Court in case No. 369/11268/16-ц formulated an approach that allows qualifying a fraudulent transaction in a non-competitive dispute as: fictitious (Article 234 of the Civil Code of Ukraine); committed contrary to the principle of good faith and inadmissibility of abuse of law (Articles 3, 13 of the Civil Code of Ukraine); violating public order (parts one and two of Article 228 of the Civil Code of Ukraine). Referring to the opinion of the Grand Chamber of the Supreme Court, the court of appeal concluded that the disputed agreement of April 13, 2018 was qualified as such that was made contrary to the principle of good faith and inadmissibility of abuse of law (Articles 3, 13 of the Civil Code of Ukraine).

It is necessary to distinguish between competitive and non-competitive challenges to fraudulent transactions.

The invalidity of a fraudulent transaction in a non-competitive challenge should

guarantee the interests of the creditor(s) "through the possibility of access to the debtor's property", even if it is held by other persons.

The purpose of the non-competitive challenge is to return the property to the debtor for recovery, i.e., to put the creditor in the position it had before the fraudulent transaction (see the resolution of the Supreme Court composed of the panel of judges of the Second Judicial Chamber of the Civil Cassation Court of April 05, 2023 in case No. 523/17429/20 (proceedings No. 61-2612cв23).

The purpose of the non-competitive challenge is to return the property to the debtor for the purpose of foreclosure, i.e., to put the creditor in the position it had before the fraudulent transaction. **The proper way is to restore the situation that existed before the violation (paragraph 4 of part two of Article 16 of the Civil Code of Ukraine), and to return the property to the debtor, challenging subsequent transactions (registration actions) in relation to this property is not required** (see the resolution of the Supreme Court composed of the panel of judges of the Second Judicial Chamber of the Civil Cassation Court of April 12, 2023 in case No. 161/12564/21 (proceedings No. 61-10546cв22).

In upholding the claims for cancellation of the vehicle registration for PERSON_4, the court of appeal considered that there were grounds to uphold these claims.

The court of appeal did not take into account that **the state registration of a vehicle, unlike real estate, does not have a law-making character; the proper way to protect the creditor is to restore the situation that existed before the violation (paragraph 4 of part two of Article 16 of the Civil Code of Ukraine), and to return the property to the debtor, challenging subsequent transactions (registration actions) in relation to this property is not required. Therefore, the claims brought against PERSON_4 should have been dismissed on this ground.** The court of appeal erroneously upheld the claims in this part. Instead, the court of first instance made a reasonable conclusion to dismiss them, but made a mistake as to the reasons for such dismissal, and therefore the decision of the court of appeal in this part must be reversed, and the court decision must be amended to set out its reasoning in the wording of this decision.

Resolution of the Civil Cassation Court within the Supreme Court of Ukraine dated September 13, 2023 in case No.638/9047/19: <https://reyestr.court.gov.ua/Review/113527002>.

A court decision to restore the situation that existed before the violation by returning a share in the right of joint fractional ownership is the basis for making an entry in the State Register of Real Property Rights to Real Estate on state registration of the right for the debtor

The CCC SC considered the case on the claim of PERSON_1 against PERSON_2, PERSON_3, PERSON_4 on invalidation of contracts and issued a resolution stating the following.

CIRCUMSTANCES OF THE CASE

On July 16, 2020, PERSON_2 was found guilty of committing a crime under part one of Article 286 of the Criminal Code of Ukraine and sentenced to a 1-year restriction of liberty with deprivation of the right to drive vehicles for a period of 1 year, and UAH 70,000 in non-pecuniary damage was recovered from him in favor of the plaintiff.

At the time the criminal offense was committed, and the criminal proceedings were considered in court, PERSON_2 owned a vehicle and an apartment on the right of joint ownership.

During the enforcement proceedings, the state enforcement officer found that PERSON_2 did not have any property.

On January 12, 2019, PERSON_2 alienated his car to his daughter PERSON_4 under a sale and purchase agreement, and on February 02, 2021, he donated his 1/2 share in the right of joint co-ownership of the apartment to his wife PERSON_3 under a donation agreement.

At the time of the conclusion of these transactions, PERSON_2 was well aware of the existence of material claims for compensation for damage caused by him in connection with the crime, and therefore the defendant "used the right for evil", alienated the property belonging to him in order to avoid foreclosure and enforcement of the court decision by entering into fraudulent contracts to the detriment of the claimant.

ASSESSMENT OF THE COURT

The courts took into account the following: a contract made to the detriment of creditors (fraudulent contract) may be either a paid or gratuitous contract.

The circumstances that allow qualifying a gratuitous contract as one made to the detriment of the creditor include, in particular, the gratuitousness of the contract; the moment of entering into the contract; the counterparty with whom the debtor enters into the disputed contract (for example, a relative of the debtor, the debtor's spouse or ex-spouse, the debtor's stepson, a related or affiliated legal entity).

The application of the "fraudulent" construction in a paid civil law contract has certain specifics, which are manifested in circumstances that allow qualifying a paid contract as one made to the detriment of the creditor. These circumstances include, in particular, the time of concluding the agreement; the counterparty with whom the debtor enters into the disputed agreement (e.g., the debtor's spouse or ex-spouse, a relative of the debtor, the

debtor's stepson, a related or affiliated legal entity); the price (market/non-market), the presence/absence of payment of the price by the debtor's counterparty);

The circumstances that allow qualifying the disputed agreement as fraudulent include: PERSON_2 was aware of PERSON_1's filing of a civil lawsuit within the framework of criminal case No. 161/9741/18, as well as in the attempts of its representative to secure its arrest (i.e., the disputed transactions were concluded during the period of consideration of criminal case No. 161/9741/18 and after the plaintiff filed a material claim); the disputed agreements of January 12, 2019 and the determination of the size of shares in the marital property and the donation of a share in the right of joint fractional ownership of February 02, 2021 are aimed at preventing the foreclosure of property in the framework of enforcement proceedings; both transactions were concluded between family members (with his wife and daughter), PERSON_2 continues to live in the apartment.

The courts reasonably concluded that the agreement on determining the size of shares in the marital property and the gift of a share in the right of joint ownership of real estate dated February 2, 2021, was partially invalidated and that the vehicle purchase and sale agreement dated January 12, 2019, was invalidated.

In satisfying the claims for cancellation of state registration and restoration of the situation by recognizing 1/2 share in the right of joint ownership of an apartment, the courts did not note that: **the purpose of the non-competitive challenge is to return the property to the debtor for foreclosure, that is, to put the creditor in the position it had before the fraudulent transaction; the proper way is to restore the situation that existed before the violation (paragraph 4 of part two of Article 16 of the Civil Code of Ukraine), and to return the property to the debtor, it is not required to challenge subsequent transactions (registration actions) in respect of this property** (see the resolution of the Supreme Court composed of the panel of judges of the Second Judicial Chamber of the Civil Cassation Court of May 18, 2022 in case No. 643/15604/17 (proceedings No. 61-3068cB21).

Therefore, the court decisions in the part of the satisfied claims for cancellation of state registration and restoration of the situation by recognizing 1/2 share in the right of joint fractional ownership of the apartment should be canceled with the adoption of a new decision in this part to restore the situation that existed before the violation by returning the share in the right of joint fractional ownership of the apartment to PERSON_2.

The court of cassation emphasizes that **the Supreme Court's resolution is the basis for entering into the State Register of Real Property Rights a record of state registration of PERSON_2's right of joint fractional ownership of 1/2 of the apartment** (see a similar conclusion in the decision of the Supreme Court as part of the panel of judges of the Second Judicial Chamber of the Civil Cassation Court of July 28, 2021 in case No. 754/5841/17 (proceedings No. 61-17966cB19).

Resolution of the CCC SC dated April 12, 2023 in case No.161/12564/21:
<https://reyestr.court.gov.ua/Review/110536312>.

Overview of the Supreme Court's case law on challenging fraudulent transactions (transactions made by the debtor to the detriment of the creditor) in civil disputes. Decisions entered into the USRCD in 2018-2023 / Compiled by the Division for Analytical and Legal Work of the Grand Chamber of the Supreme Court of the Department for Analytical and Legal Work / Edited by Supreme Court Judge of the Civil Cassation Court, PhD in Law, Associate Professor V. I. Krat Kyiv, 2024. 36 p.

Disclaimer: the publication contains a brief overview of some court decisions of the Civil Cassation Court within the Supreme Court and the Grand Chamber of the Supreme Court. Each of them contains only the main conclusion on the legal issue that arose in the case. For a proper understanding of the legal position expressed in a court decision, it is necessary to read its full text, which is available in the Unified State Register of Court Decisions.

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