

Commercial Property - Austria

Double sale: Supreme Court enhances rights of injured party

Contributed by **Graf & Pitkowitz**

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In a recent decision the Supreme Court allowed a direct claim by the first purchaser against the second purchaser in case of a double sale of a property.

Facts

The seller and the first purchaser agreed on the transfer of the property for €190,000. The parties signed a (binding) term sheet. Shortly thereafter, the second purchaser offered €215,000 for the same property. The seller accepted the second purchaser's offer and a purchase agreement was signed. On the basis of this agreement, the second purchaser successfully filed for registration of ownership in the property with the land register.

When signing the second agreement and filing the land register application, the managing director of the second purchaser was aware of the first agreement. He knew that the conclusion of the second contract of sale and the registration of property interfered with the rights of the first purchaser, who had previously acquired the property and therefore had a mandatory title for the registration of ownership with the land register.

As the second purchaser was the first to file an application for registration of the title in the land title register, he became the lawful owner of the property.

The first purchaser clearly had a claim against the seller for breach of contract. However, the first purchaser filed an action against the second purchaser and requested that ownership in the land be transferred directly to him in exchange for payment of the purchase price of €190,000 to the second purchaser.

Decision

The Supreme Court approved the first purchaser's restitution claim against the second purchaser on the basis of general indemnity laws. Such claim was based on the prerequisite that the later purchaser had encouraged the seller to breach the first purchase agreement. Moreover, the ruling clarifies that if the second purchaser is aware of or should have been aware of the first agreement, he or she must respect that agreement.

Thus, the Supreme Court ruled that the first purchaser could rightfully demand registration of his ownership in the property against payment of €190,000 to the second purchaser.

Comment

A direct claim against the second purchaser, such as in the case at hand, is particularly useful in a scenario where the seller is insolvent, as the property is not handed back to the seller and then passed on to the first purchaser, but rather transferred directly between the two buyers.

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