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# Problematic Issues of Foreclosure on the Object of Pledge of Property Guarantor (Resident of Ukraine)

## 1. Introduction

Ukraine, as a state, is currently taking steps to integrate into the European Union, which leads to the emergence of contractual obligations between various business entities. At the same time, the further development of economic relations is accompanied by active lending operations, including not necessarily financial institutions, but entities that cooperate in their activities. In this regard, it is necessary to understand the essence of the legal system of Ukraine, its features, to ensure the fulfillment of contractual obligations.

One of the most reliable ways to ensure the fulfillment of obligations is to provide funds secured by the debtor's property. In this case, the mortgagor may also be another person who provides guarantees of the debtor's obligations by pledging his property, which may be of interest to the creditor. Often such a property guarantor can be an affiliated person of the debtor.

The problem of foreclosure on collateral, when the mortgagor is a property guarantor, is not considered very popular among lawyers. In the study of this issue in modern science, there are currently no fundamental novels.

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The urgency of the study is enhanced by the need to develop mortgage relations, clarify the extent of performance by the property guarantor of its obligations, the creation of a mechanism for legal regulation of these contractual relations to prevent abuse and implementation of civil law, including justice, good faith and reasonableness.

Issues of fulfillment of the debtor's obligations by the property guarantor were studied in the works of domestic scientists, but in connection with the adopted new legislation, they lose their relevance.

## 2. The structure and mechanism of normative resolutions

In the given article civil law doctrine on the liability of the property guarantor is investaigated as well as to determine the place of the property guarantee in the system of ways to ensure the fulfillment of obligations is urgent the issues concerning. Normative resolutions which are given by the Supreme Court of the Ukraine according to cases. The structure and mechanism of normative resolutions are discussed. the norms of the current legislation providing additional mechanisms for protection of the rights of creditors are necessary 3. Normative resolutions of the Ukraine.

## 3. Correlation of normative legal acts

One of the main ways to ensure the fulfillment of obligations arising from credit relations is collateral with the participation of a property guarantor.

The property guarantor may be a participant in the mortgage relationship in accordance with the Civil Code of Ukraine[2]. The relationship between the mortgagor and the debtor on the main obligation is not collateral, the rights and obligations arising between them are not included in the content of the mortgage relationship.

It should be emphasized that the characteristics of the obligation of the property guarantor should be attributed to the institution of col-

[2] Tsyvilnyi kodeks Ukrainy vid 16.01.2003 r. № 435-IV (2003). Vidomosti Verkhovnoi Rady Ukrainy, 40. URL: https://zakon.rada.gov.ua/laws/show/43515. (in Ukrainian).

lateral, and not a guarantee, which is of fundamental importance within the scope and content of such legal relations.

The essence of the obligations of the property guarantor is that in case of non-performance by the debtor of the main obligation, the property guarantor undertakes to fulfill the obligation instead of the main debtor within the value of the collateral (mortgage). In this case, the property guarantor in case of default by the debtor secured by the main obligation has the right to perform such an obligation in order to prevent foreclosure on the collateral.

Indeed, the debtor under the principal obligation and the property guarantor mortgagor are not joint and several debtors, as joint and several liability arises only in cases expressly provided by law or contract

The object of the pledge can be any property (thing, securities, property rights) that can be alienated by the mortgagor and which can be levied. Part 2 of the same article stipulates that the object of the pledge may be the property that the mortgagor will acquire after the occurrence of the pledge (future harvest, livestock, etc.).

If real estate is pledged, it is a mortgage, which provides for additional special legal regulation.

With regard to property rights, one should agree with Shimon S.I., who believes that "the difference between the pledge of property rights from other types of pledge is primarily related to the procedure of foreclosure on the pledged property. The Law Ukraine "On Pledge" allocates a separate section V "Pledge of property rights»; there only in Part 1 of Art. 49 stipulates that the mortgagor may pledge the right to claim the obligations in which he is a creditor at the time of concluding the contract, or which may arise in the future. The pledge of property rights does not establish such strong guarantees for the interests of the creditor as the pledge of the thing, because the right, although it has property value, but is only an opportunity to acquire real property, which can be lost through the mortgagor and without it"[3].

[3] Shymon S. I. (2019) Zvernennia stiahnennia na predmet zastavy – mainovi prava (perevahy y nedoliky zakonodavchykh rishen) [Foreclosure on subject of pledge – property rights (advantages and disadvantages of legislative decisions)]. Kyiv. Pravove rehuliuvannia ekonomiky. № 18, p. 96. [in Ukranian]

In case of non-fulfillment of the obligation secured by the pledge, the pledgee acquires the right to apply for foreclosure on the object of the pledge. At the expense of the object of the pledge the pledgee has the right to satisfy in full the requirement defined at the moment of actual satisfaction, including payment of percent, penalties, compensation of the losses caused by breach of the obligation, necessary expenses for the maintenance of the pledged property, and also expenses incurred in connection. language with the presentation of the claim, unless otherwise provided by contract.

The encumbrancer is able to choose one of the extrajudicial methods of foreclosure on the mortgaged movable property: 1) transfer of property to the creditor; 2) sale by the encumbrancer of the object of the pledge by concluding a contract of sale with another person or at a public auction; 3) satisfaction of the secured claim if the subject of the security encumbrance is the right of monetary claim; 4) transfer to the encumbrancer of the relevant amount of money, including by way of contractual write-off, if the object of the pledge is money or securities; 5) sale of the mortgaged property on the basis of the executive inscription of the notary.

The law sets the priority of contractual settlement of this issue, which is beneficial for the parties, because in case of impossibility to sell the collateral from the auction, recognizing the auction as failed, its value in accordance with the law for each subsequent auction is reduced – the starting price of the second and subsequent auctions price reduced by 30% compared to the initial price of the previous auction. If all auctions are declared void, the pledgee is able to keep the mortgaged property at the original price offered at the last auction. Therefore, in the interests of the mortgagor to repay the debt by transferring the object of the pledge directly to the creditor at the price specified in the pledge agreement. This version of the decision helps to ensure the interests of all participants who are interested in the value of the collateral to repay all claims of the pledgee, otherwise the latter has the right, unless otherwise provided by law or contract, to receive the amount insufficient to fully repay the claim from other property. the debtor in the order of priority provided by law (Article 24 of the Law Ukraine “On Pledge”).

According to the Law of Ukraine "On Pledge" foreclosure on the mortgaged property is carried out by a court or arbitration court, on the basis of a notary's writ of execution, unless otherwise provided by law or pledge agreement.

The Law of Ukraine «On Mortgage» provides for 3 ways to apply for foreclosure on the subject of the mortgage: (i) on the basis of a court decision (court method of foreclosure) and (ii) a notary's writ of execution or (iii) under a mortgage agreement (both extrajudicial) .

The Grand Chamber of the Supreme Court in its decision of 21.03.2018 in case № 760/14438/15-ts and later also in the decision of 23.05.2018 in case № 916/5073/15 indicated that the transfer of ownership of the mortgagee to the mortgagee is a way out-of-court settlement. In this case, if the mortgagor does not recognize, deny or dispute the plaintiff's ownership, or in case of refusal of the registrar in the state registration of ownership of the mortgage, the mortgagee still has the opportunity to sue for recognition of ownership, that is, the mortgagee is obliged to implement the extrajudicial methods of foreclosure provided by the mortgage agreement.

In Part 1 of Art. 23 of the Law of Ukraine «On Securing Creditors' Claims and Registration of Encumbrances» provides that in accordance with the security encumbrance the encumbrancer has the right in case of breach by the debtor of the encumbered obligation or contract under which the security encumbrance arose, unless otherwise provided by law or contract satisfaction of its claim at the expense of the subject of encumbrance in the order according to the established priority.

The application for foreclosure on the subject of security encumbrance is carried out on the basis of a court decision, a notary's writ of execution in the manner prescribed by law, or out of court in accordance with this Law. The encumbrancer who initiates foreclosure on the subject of security encumbrance is obliged to register in the State Register information on foreclosure on encumbrance before the beginning of the foreclosure procedure.

The encumbrancer, who intends to collect the penalty on the security encumbrance out of court, is obliged to send to the debtor and other encumbrances, in favor of which the registered encumbrance is established, a written notice of breach of the encumbrance. The notice is sent

simultaneously with the registration in the State Register of information on foreclosure on the subject of security encumbrance.

The Law of Ukraine «On Securing Creditors' Claims and Registration of Encumbrances» connects further actions of the debt collector not only with fulfillment or non-fulfillment by the debtor of the requirement to eliminate breach of obligation or transfer the subject of security encumbrance to the encumbrancer, but also establishes appropriate term for such execution – within 30 (thirty) days, and connects the beginning of the expiration of this period with the moment of registration in the State Register of information on the application of foreclosure on the subject of encumbrance. The encumbrancer who initiates foreclosure on the subject of security encumbrance is obliged to register in the State Register information on foreclosure on the subject of encumbrance before the beginning of the foreclosure procedure.

The encumbrancer, who intends to collect the penalty on the security encumbrance out of court, is obliged to send to the debtor and other encumbrances, in favor of which the registered encumbrance is established, a written notice of breach of the encumbrance. The notice is sent simultaneously with the registration in the State Register of information on foreclosure on the subject of security encumbrance (Article 27 of the Law of Ukraine «On Securing Creditors' Claims and Registration of Encumbrances»).

The Law of Ukraine «On Securing Creditors' Claims and Registration of Encumbrances" connects further actions of the debt collector not only with fulfillment or non-fulfillment by the debtor of the requirement to eliminate breach of obligation or transfer the subject of security encumbrance to the encumbrancer, but also establishes appropriate term for such execution – within 30 (thirty) days, and connects the beginning of the expiration of this period with the moment of registration in the State Register of information on the application of foreclosure on the subject of encumbrance.

In this case, according to the conclusion of the Supreme Court in the decision of 02.09.2020 in the case № 910/11051/19[4] "...evasion

[4] Sprava № 910/11051/19: postanova Verkhovnoho Sudu vid 02.09.2020 [The decree of the Supreme Court]. URL: https://reyestr.court.gov.ua/Review/91340985 [in Ukrainian].

of sending the debtor a notice of breach of the encumbered obligation, registration in the State Register of information on foreclosure on the subject of encumbrance, and also non-compliance with the 30-day period from the moment of registration in the State Register of information on foreclosure on the subject of encumbrance, are considered violations that make it impossible for the bank to further take actions aimed at foreclosure on collateral...".

The case law of the Grand Chamber of the Supreme Court (decision of 19.05.2020 in case № 361/7543/17)[5] also shows that "...the existence of the court decision to recover from the debtor in favor of the creditor debt under the loan agreement under the above provisions of law is not a ground for termination of the debtor's monetary obligation and termination of the mortgage and does not deprive the creditor of the right to satisfy its claims under the principal obligation by applying for foreclosure on the subject of the mortgage in the manner prescribed by law. In order to ensure a clear understanding of the decision in the operative part, it should be noted that the foreclosure on the mortgage is due to the recovery of debt under the main contract, and therefore such foreclosure is not an additional penalty, which could be understood as double".

One of the main obstacles to the speedy resolution of disputes in this category is the issue of determining the initial sale price of the mortgage, as its indication is a mandatory component of the court decision to recover the mortgage through its implementation, including public auction. In this case, it should be set at a level not lower than the usual prices for this type of property, based on the assessment conducted by the subject of appraisal activity.

In view of the above, it is not uncommon for mortgagors, in order to delay the decision, question the correctness of a certain initial price of real estate for resale, which leads to delays in the court cases.

However, the Grand Chamber of the Supreme Court in its decision of 21.03.2018 in case № 235/3619/15-ts, solved this problem by noting that in disputes of this category, only not indicating in the operative

[5] Sprava № 361/7543/17: postanova Velykoi Palaty Verkhovnoho Sudu vid 19.05.2020 [The decree of the Grand Chamber of the Supreme Court]. URL: https://reyestr.court.gov.ua/Review/89819777 [in Ukrainian].

part of the court decision the initial price of the mortgage in monetary terms is not crucial, and does not entail the unconditional reversal of court decisions.

This position is quite logical, because the initial sale price of the mortgage, set after a long forensic examination, already at the stage of execution of the decision will not correspond to market prices for the same property, because from the time of forensic examination and court proceedings appellate and cassation instances, may take more than 1 year, as a result of which the validity of the property valuation report expires. As a result, the mortgagor has the opportunity to apply for a re-examination of the same property, which is most often used by unscrupulous debtors.

In 2018 actually enshrined these conclusions at the legislative level, changing the provisions of Article 39 of the Law of Ukraine «On Mortgage». Thus, in case the court determines the method of realization of the subject of the mortgage by conducting a public auction, the price of the subject of the mortgage is not indicated in the court decision and is determined during its enforcement at a level not lower than normal prices for this type of property. or an independent expert at the stage of property valuation during enforcement actions.

Eviction of residents from the subject of the mortgage is one of the biggest problems when applying for foreclosure on the subject of the mortgage.

It should be noted that according to Part 2 of Art. 39 of the Law of Ukraine «On Mortgage» simultaneously with the decision to apply for foreclosure on the subject of the mortgage court on the application of the mortgagee makes a decision on eviction of residents on the grounds provided by law, if the subject of the mortgage is a house or apartment.

Foreclosure on a mortgaged dwelling house or dwelling is the basis for the eviction of all residents, except tenants and members of their families. Eviction is carried out in the manner prescribed by law (part one of Article 40 of the Law of Ukraine “On Mortgage”).

Thus, if the parties to the mortgage agreement provide for a mortgage clause on the possibility of foreclosure on the subject of the mortgage by out-of-court settlement on the basis of this agreement, eviction of residents from the object must take place in accordance with Article

40 of the Law of Ukraine "About the mortgage" and in part 3 of Article 109 of the Housing Code of the USSR procedures. Failure to do so shall result in a claim for eviction of the mortgaged occupants, as there is no violation, non-recognition or challenge of the mortgagee's or new owner's rights with respect to the mortgage at the time of the claim.

The Housing Code of the Ukrainian SSR[6] establishes a general rule on the impossibility of evicting citizens without providing other housing. As an exception, eviction of citizens without the provision of other residential premises is allowed when applying for foreclosure on a residential premises purchased by a citizen at the expense of a loan, the return of which is secured by a mortgage of the respective residential premises.

Determining whether there are grounds for the eviction of persons living in a residential property that has been mortgaged to secure the fulfillment of loan obligations is the determination of the funds for which the mortgaged property was purchased. If the mortgaged property is purchased at the borrower's personal expense and not at the expense of the loan, the eviction of such citizens is possible only with the simultaneous provision of other permanent housing.

The Supreme Court in its decision of 31.03.2021 in case № 753/72/17[7] concluded that the former owners and persons living in the house, which was purchased at their expense and mortgaged, even after the mortgagee applied for foreclosure on such property, by virtue of the provisions of Art. 109 Housing and Communal Services of the Ukrainian SSR have the right to use such housing until the moment of eviction with the provision of other permanent housing.

As the property guarantor is not the borrower in the principal obligation, the mortgagee will have significant difficulties in evicting the occupants of the premises, and creditors are usually forced to seek and provide other permanent housing to such persons.

In order to ensure the fulfillment of contractual obligations, it is considered necessary to simplify the mechanism of eviction, as the latter

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[6] Zhytlovyi kodeks Ukrainskoi RSR: Zakon Ukrainskoi Radianskoi Sotsialistychnoi Respubliky vid 30.06.1983 r., № 5464-X (1983). Vidomosti Verkhovnoi Rady URSR, 28. URL: https://zakon.rada.gov.ua/laws/show/5464-10#Text [in Ukrainian].

[7] Sprava № 753/72/17: postanova Verkhovnoho Sudu vid 31.03.2021. URL: https://reyestr.court.gov.ua/Review/96074863 [in Ukrainian].

voluntarily limited their ownership of the mortgage in the manner prescribed by applicable law and assumed the risk of adverse consequences in the form of default. knitting by the debtor.

It should also be noted that the state sometimes interferes in civil relations, which leads to a deviation from the implementation of the basic principles of civil law, as exemplified by the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On moratorium on foreclosure of Ukrainian citizens currency", according to which immovable residential property, which is considered as a subject of pledge according to the Law of Ukraine "On Pledge" and / or a subject of mortgage according to the Law of Ukraine" On Mortgage", if such property acts as securing the obligations of a citizen of Ukraine (borrower or property guarantor) on consumer loans granted to him by credit institutions – residents of Ukraine in foreign currency.

In addition, other property (property rights) that is subject to recovery from the borrower in accordance with the law or the loan agreement may not be forcibly recovered (alienated without the owner's consent) if the funds received by the collector from the sale (revaluation) of the collateral (mortgage) are insufficient. as well as a credit institution may not cede (sell, transfer) debt or debt on credit in favor (owned) of another person.

Thus, it can be argued that the measures taken to credit relations related to the adoption of the Law of Ukraine "On Moratorium on Recovery of Property of Ukrainian Citizens Provided as Collateral for Foreign Currency Loans" violate normal market relations and lead to imbalance of civil law. mechanism for protection of violated rights and interests. At the same time, the law did not solve the problem of fulfillment of obligations by debtors and property guarantors, as it introduced only a ban on the recovery of property of such citizens, without creating alternative ways to repay debts in foreign currency, such as debt restructuring.

It should be emphasized that the adopted and signed Bankruptcy Code of Ukraine provides that the Law of Ukraine «On moratorium on recovery of property of citizens of Ukraine granted as collateral for loans in foreign currency» expires one year after the entry into force of this Code, ie from 21.10.2020. This code introduces such a novelty into Ukrainian legislation as the bankruptcy of individuals, and the legislator has determined that individuals can apply to the commercial court to ini-

tiate proceedings in the case of its bankruptcy. Bankruptcy proceedings against such individuals will use mechanisms such as debt restructuring and debt repayment.

However, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning a Moratorium on Recovery of Property of Citizens of Ukraine Provided as Collateral for Foreign Currency Loans" of 16.09.2020 № 895-IX amended paragraph 4 item 2 of the section "Final and Transitional Provisions" Code of Ukraine on Bankruptcy Procedures, replace the words» in one year "with the words» in eighteen months", ie the term of invalidity was extended by the Law of Ukraine» On moratorium on recovery of property of citizens of Ukraine granted as collateral for foreign currency loans", and the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning the Restructuring of Liabilities for Foreign Currency Loans and Adaptation of Insolvency Procedures of Individuals" of April 13, 2021 № 1382-IX – replaced by the words "in twenty months", ie the term of expiration was extended Law of Ukraine "On the moratorium on the recovery of property of citizens of Ukraine, provided as collateral for loans in foreign currency" to 21.10.2021.

Given the above, we believe that the lifting of the moratorium on foreclosure of Ukrainian citizens granted as collateral for foreign currency loans in the event of the need to resume lending is a step to protect the rights and interests of creditors, especially given the need for a sharp devaluation of the national currency and debt restructuring debtors, which arose in the relevant credit relations, the implementation of which was secured by a property guarantee.

The pledge of rights to shares in the authorized capital of the company does not make this company under the control of the pledgee. If a member of the company has pledged his share, it does not deprive him of his rights as a member and does not limit the opportunity to participate in the management of the company.

In order to protect their rights, for example, mortgagees may impose additional obligations on property guarantors who are mortgagors, including not initiating the process of termination or liquidation of the borrower's legal entity and/or mortgagors, initiating bankruptcy proceedings. borrower and/or mortgagors (mortgagors), etc.

However, contractual obligations between the pledgee and the mortgagor may not establish the rights and obligations of third parties, and, for example, any natural or legal person may initiate bankruptcy proceedings against a legal entity to which corporate rights have been pledged.

Thus according to h. 1 Art. 59 of the Bankruptcy Procedure Code of Ukraine provides that from the date of the decision of the commercial court to declare the debtor bankrupt and open liquidation proceedings, the powers of the owner of the bankrupt's property are terminated. Thus, in the case of pledge of corporate rights of another person declared bankrupt, they will essentially have zero value, and therefore the recovery of such property will not give the creditor the opportunity to protect their rights.

It should be borne in mind that, as correctly noted, the Supreme Court in the decision of 23.05.2018 in the case № 910/20991/16 property guarantor, as a mortgagor, is not a debtor on the secured obligation, so his liability to the creditor is limited only the value of the object of the pledge (in the transfer of ownership of the object of the pledge to the pledgee) or the amount received as a result of the sale of the object of the pledge. That is, the satisfaction of claims on the main obligation of other property of the property guarantor is not provided.

Thus, there is reason to believe that in the case of transfer by the guarantor as collateral for a share in the authorized capital of another person declared bankrupt, it is impossible to recover from the guarantor the value of this share from other property, including cash, and the bankruptcy of corporate the rights to which the property guarantor belongs, may indicate the improper performance of the property guarantor of its duties as a participant (founder) of the person, and such impossibility is in doubt.

In this case, the mortgagor who owns the collateral, in case of loss, damage, damage or destruction of the mortgaged property due to his fault is obliged to replace or restore this property, unless otherwise provided by contract, and replacement of the collateral may be carried out only with the consent of the mortgagee, if otherwise not established by contract or law. However, the issue of replacing the object of the pledge with the pledge of corporate rights remains unresolved by law.

Given the above, in the case under investigation, the pledgee may justify the need to replace the object of the pledge by reference to a significant change in circumstances, but, in particular, the right of pledge is terminated, in particular in case of loss of the object of the pledge, if the mortgagor has not replaced the object of the pledge, sale of the object of the pledge, Such circumstances create a subject of dispute, which will be resolved in court, which requires additional resources from the parties of the relationship.

Thus according to Art. 651 of the Civil Code of Ukraine change of the contract is allowed only with the consent of the parties, unless otherwise provided by contract or law. The contract may be amended by a court decision at the request of one of the parties in the event of a material breach of contract by the other party and in other cases established by contract or law.

It can be concluded that in view of the above provisions of the legislation in order to ensure the balance of interests of the participants of the mortgage relationship and lending development, it is necessary to supplement the rules providing additional mechanisms to protect creditors' rights in case of bankruptcy of a company whose corporate rights were pledged.

It should be noted that the rights of creditors, including foreign ones, in Ukraine are gradually being increasingly protected.

Interesting in this regard is the position of the Supreme Court, which departed from the doctrine of «automatic double recovery», and points out that the recovery of debt on the main obligation does not preclude the possibility of satisfying the creditor's claims at the expense of the security obligation. way to collect debts.

The ruling of the Grand Chamber of the Supreme Court of September 18, 2018 in case № 921/107/15 визнача is decisive in these legal relations. It contains several basic principles that are actively applied by the courts: if as a result of foreclosure on the subject of the mortgage the creditor has outstanding debt on the principal obligation, the principal obligation is not terminated in accordance with the provisions of Art. 599 of the Civil Code of Ukraine; at the expense of the subject of the mortgage the creditor has the right to satisfy his claim on the main obligation in full; the use by the creditor of another legal remedy to

protect his violated and not properly restored by the debtor right is not considered a double penalty.

It should be noted that such conclusions were reached by the Grand Chamber of the Supreme Court as a result of consideration of legal relations in which the creditor applied for foreclosure on the subject of the mortgage to the mortgagor, which is different from the debtor. This legal position is consistent with the content of paragraph 42 of the Resolution of the Plenum of the Supreme Specialized Court of Ukraine for Civil and Criminal Cases of 30.03.2012 № 5), which states some aspects of recovery of mortgage debt, namely: the court may simultaneously recover the subject of the mortgage and collect the amount of debt under the loan agreement only within the «outstanding» claims of the creditor under the main obligation, indicating in the decision the amount of debt under the loan agreement; the court may impose a penalty on the subject of the mortgage, when the debtor is a person other than the mortgagor, taking into account the provisions of Art. 11 of the Law of Ukraine "On Mortgage", according to which in case of satisfaction of the mortgagee's claims at the expense of the subject of the mortgage, the property guarantor acquires the rights of the creditor under the main obligation.

Returning to the positions of the Supreme Court, it should be noted that it is not considered a double penalty for foreclosure in the presence of an unenforced court decision to recover the principal amount of the debt (even if a writ of execution was received but not enforced). In the decision of 27.09.2018 in case №910/23408/17 the Supreme Court noted that in order to avoid double recovery, the debtor who repaid the debt on the main obligation (for which a writ of execution was issued) has the right to apply to the court in the order to recognize the executive document as not subject to execution. Thus, the Supreme Court departed from the doctrine of "automatic double recovery" and imposed the obligation to protect its right to the debtor.

Having analyzed the case law of national courts, given the legal position of the Grand Chamber of the Supreme Court and the practice of the Supreme Court applying the provisions of Part 4 of Art. 36 of the Law "On Mortgage", the author concluded that in the case of foreclosure on the subject of the mortgage out of court, the creditor loses the opportunity to recover the outstanding part of the debt on the main obli-

gation. In disputes on the termination of legal relations and recovery of debt under credit agreements, the Supreme Court in its decisions takes the position that it is impossible to carry out actual double recovery in the case of recovery of both basic and security obligations, because the debtor (in case of actual repayment of debt for main obligation) has the right to recognize the writ of execution as unenforceable.

The decision of the Grand Chamber of the Supreme Court of 04.07.2018 in case № 310/11534/13-ц[8] states that the exercise of a person's right to protection cannot be made dependent on the use of other means of legal protection. The security obligation has additional (accessory) character, instead of alternative to the basic. The Grand Chamber of the Supreme Court considers that in case of incomplete satisfaction of the creditor's claims due to the security encumbrance, the main obligation of the parties is not terminated, but changes in the subject and terms set by the creditor, when applying to the court, which gives the creditor the right to claim. of the debtor, including by recovery of the remaining debt on the main obligation (the body of the loan) in full and interest and penalties under the contract accrued at the time of recourse to the court with a demand for early performance of the loan agreement, for repayment of which was insufficient funds received from the sale of mortgaged property during the execution of a court decision».

## 4. Conclusions

The essence of the obligations of the property guarantor is the performance by the property guarantor of the obligation of the obligation instead of the main debtor within the value of the item transferred as collateral (mortgage). In this case, the property guarantor in the event of default by the debtor secured by the main obligation has the right to perform such an obligation in order to prevent foreclosure on the collateral.

It can be concluded that taking into account the above provisions of the legislation of Ukraine there are some problems with the application for recovery of the collateral (mortgage).

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[8] Sprava № 310/11534/13-ц: postanova Velykoi Palaty Verkhovnoho Sudu vid 04.07.2018 [The decree of the Supreme Court]. URL: https://reyestr.court.gov.ua/Review/75287282 [in Ukrainian].

At the same time, some of them are temporary (a moratorium on the recovery of property of Ukrainian citizens granted as collateral for loans in foreign currency) or are remnants of the Soviet legal system (the Housing Code of Ukraine was adopted in 1983).

The development of the institution of securities and ownership of corporate rights is crucial for the protection of the interests of all subjects of mortgage legal relations, as there are cases of abuse in this area.

The property guarantor is liable for the obligations of the main debtor in the amount of the actual sale of the subject of the property guarantee, while the restrictions imposed by the legislator on foreclosure lead to an imbalance of rights and interests of debtors and creditors. At the same time, the possibility of recognizing a property guarantor as an individual or a legal entity by its insolvency introduces market mechanisms of interaction between the creditor, the debtor and the property guarantor.

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**Summary**
The author of the article investigates the peculiarities of the procedure for foreclosure on the property of a property guarantor, as there are currently problems with the practical application of legal norms. The author assumes that one of the main ways to ensure the fulfillment of obligations arising from credit relations is a pledge with the participation of a property guarantor who is a party to the mortgage relationship. The relationship between the mortgagor and the debtor on the main obligation is not collateral, the rights and obligations arising between them are not included in the content of the mortgage relationship. The shortcomings of civil law regulation of relations in this area have been identified and amendments to the legislation of Ukraine on pledge have been proposed. The need for analysis and further study of the status of the property guarantor, ie the person who mortgages the property belonging to him to ensure the fulfillment of the debtor's obligation to the mortgagee. Improving the effectiveness

of law enforcement also requires improving the mechanism of legal regulation of contractual relations.

**Keywords:** pledge, object of pledge, mortgage, foreclosure, property guarantor