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ASPECTS OF PROTECTION IN THE MORTGAGE IN THE LEGISLATION OF THE UNITED ARAB EMIRATES

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Abstract:

In this research, we dealt with four aspects of consumer protection in mortgage according to the legislation of the United Arab Emirates. The first aspect was to protect the mortgagee creditor from the fraud of the current debtor who may mortgage the residential home and then protest after that the house's inability to sell according to the Civil Procedures Law. We suggested a solution to it, and then the second protection was devoted to consumer protection (the present debtor) from requiring the consent of the mortgagee to dispose of the mortgaged money. We also presented the appropriate proposal to address this case, as for the third, consumer protection (the mortgagee creditor) in the report on the nullity of the mortgage if it is focused on a property that does not exist at the moment of the mortgage. And finally, fourth, we dealt with the extent of the possibility of relying on the mortgage bond as an executive bond without the need for a court ruling, because that is a waste of effort and time.

1. Introduction

An insurance mortgage, called in some laws the official mortgage¹, is one of the most important guarantees that a creditor obtains from the debtor under the agreement between the mortgagor and the mortgagee. If the insurance mortgage takes place, the mortgage right is created for the mortgagee on the mortgaged money directly without the mediation of anyone. Although the right of the insurance mortgage has arisen and enforced between the two parties as soon as the contract is made, it is not implemented and its effects are not arranged in the right

of others except by registering it in the official registry prepared for that. The security mortgage right continues in force and has its effects arranged until its expiration, independently or according to the expiration of the debt that was guaranteeing it.

2. The face of protection here is for the creditor and not for the debtor when the debtor mortgages the residential house and then argues that the residence cannot be sold according to the Civil Procedures Law.

We also know that the mortgaged money must be capable of being dealt with². Because the primary purpose of the mortgage is to enable the creditor, upon non-fulfillment of his right, to enforce the mortgaged money, and sell it by public auction³. Therefore, the mortgaged money must be something that may be dealt in so that it can be sold by public auction, because everything that may be dealt in may be sold by public auction, and the reverse is also true⁴.

Thus, it is not permissible to mortgage the endowment because it is not permissible to deal in it and sell it by public auction, just as it is not permissible to mortgage public funds, because they are outside the dealing department by virtue of the law. Thus, it is not permissible to sell it by public auction, and it is also not permissible to mortgage the right of use and the right of housing that come on a real estate, as they are originally rights related to the person of its owner, which may not be sold by public auction, and therefore it is not valid to mortgage them. Likewise, the right of easement may not be sold by public auction independently of the property serviced, and therefore it is not valid to mortgage it independently of the mortgage of the property⁵, and it is not permissible to mortgage the restricted property on the condition that it is not disposed of, and the condition of preventing disposal must be considered. Likewise, subordinate real rights may not be mortgaged independently of the obligation that guaranteed their fulfillment, because they cannot be sold independently of this obligation, but rather they do not exist unless they are based on this obligation, and accordingly, it is not valid to mortgage the right of the insurance mortgage, or the right of the possession mortgage⁶.

It must be noted here that the mortgage of the residential home is permissible, but the mortgagee must know that he may collide in terms of enforcement with the prevention of the sale of the residential home - if it is the only residence for the family - in accordance with Article 247/2 of the UAE Civil Procedure Law No. 11 of 1992. But if it becomes evident (the debtor's tampering) and his bad faith from the beginning of the mortgage, such as if he mortgages a residential house

and deludes the creditor that it is in excess of his need and then sells his real estate or transfers its ownership in the name of others, and upon the arrival of the debt term, he adheres to Article 247/2 of the Civil Procedures Law, in such a case A ruling was issued by the Federal Supreme Court in which it authorized the sale of the house, and if it was designated for the residence of the debtor's family after it was proved that the debtor was tampered with and caused its ruling by saying that "when the mortgagor placed his property of his own or his movable property whose special laws require his registration of freedom and choice of collateral for his loan, it must be Willingness to abandon him by expropriating his ownership and selling it in a public auction when he is unable to pay the debt on time, whoever is in possession of it and the way it is exploited even if he takes it as a residence for himself or for someone else because the mortgagee would not accept lending against the mortgage guarantee except in accordance with these provisions organized by the legislator in the aforementioned civil law⁷, and the saying By depriving the mortgagee from the procedures of expropriating the mortgaged property and selling it at public auction, for the mortgagor to take up a residence after the mortgage, and upon commencing the sale in accordance with Article 247 of the Civil Procedures Law, the legal system of the mortgage and its enforcement are subject to He exhorted the will of the present, and it is one of the paths of absurdity, which is forbidden by the legislator⁸.

3. Protection of the consumer (the mortgagee) from requiring the consent of the mortgagee to dispose of the mortgaged money

We find that some real estate registration departments oblige the current debtor to obtain the mortgagee's approval in case he wants to dispose of the mortgaged money. Is this procedure legally correct or not?

Article (1412) of the Civil Transactions Law states that: "The mortgagor shall dispose of his mortgaged property as an insurance mortgage without this affecting the rights of the mortgagee."⁹ Accordingly, the mortgagor has the right to perform various material and legal actions that do not threaten the integrity of the mortgagee, or expose the rights of the mortgagee to loss. So the mortgagor has the right to dispose of his mortgaged property as a security mortgage, the actions of the owner, such as sale, donation and the like, except that the property is transferred over the mortgage if the mortgage Register in the relevant department before registering the disposal. If the mortgagee permits the sale, his right is transferred to the price¹⁰.

It is not permissible to agree to restrict the freedom of the mortgagee to dispose of the mortgage, because this agreement is inconsistent with the nature of the insurance mortgage¹¹, which aims to enable the owner to benefit from the credit value of money without depriving him of his powers, and accordingly, this agreement is invalid because it is contrary to the provisions of the insurance mortgage. It is decided that the current debtor will spend the mortgaged money, and even if it is a share in common money, this share will not be cleared of the mortgage attached to it¹², and the mortgagee still has the right to track the share and implement it in whatever hand it is; In addition, the pledged share, if it is common, does not prevent the current debtor from requesting the division of the common money, and the mortgagee cannot object to this division unless conclusive evidence is presented that the division is harmful to him and his rights¹³.

It should be noted that Article 10 of the Local Insurance Mortgage Law of the Emirate of Dubai, No. 14 of 2008, decides that the mortgagor's behavior with the mortgaged property is invalid without obtaining the mortgagee's approval, meaning that the penalty is null. We find that the text of this article is unsuccessful, as the creditor has the authority to follow the mortgaged property in whatever hand it is and obtain his right from its price, and therefore we see that there is no difference between the mortgaged property remaining with the present or its transfer to the holder.

However, the extent of restriction of the mortgagor's authority to dispose of the mortgaged property depends on the type of disposition, and whether it is a legal act or a material act. Where it must be pointed out that the actions of the mortgagor in the mortgaged property may take the form that affects the entity of the property so that its economic value decreases, which ends up weakening the mortgagee creditor's guarantee¹⁴.

4. Protection of (the mortgagee creditor) in the determination of the nullity of the mortgage if it is placed on a property that does not exist at the moment of the pledge.

The condition of the existence of the real estate at the time of the mortgage and the text regarding it was stated in the UAE Civil Transactions Law, specifically Article (1405), which stipulated the existence, otherwise the contract is considered void, but in the Dubai Local Insurance Mortgage Law No. 14 of 2008 and in Article 5/3 specifically, it is permitted to mortgage the property on the map This article considered that as a governmental existence of real estate and not the actual one stipulated by the Civil Transactions Law in Article

1405, and we find the same provision in the Dubai Land Registry Regulation Law No. 13 of 2008, as this local law stipulates that whoever buys a property off the map, He obtains a preliminary - primary bond - according to which he may mortgage his property to a bank, for example, to obtain a loan, knowing that the property does not actually exist, but it does exist¹⁶, but such a credit - guarantee - often does not convince the creditor and refuses to accept a property that is still not built yet to be Subject to an insurance mortgage, the developer may be lagging and cannot complete the project, and then this will lead to the creditor's rights remaining without guarantee, and we see the necessity of deciding the nullity of this type of mortgage because the buyer during this period does not have a right in kind, but he only has the right of a person, and then Cannot The acceptance of a mortgage of personal rights is an insurance mortgage.

5. Protecting the creditor mortgagee in the mortgage, and considering the mortgage bond as an executive document

The execution documents in the UAE legislation were stated in Article 225 of the Civil Procedures Law No. 11 of 1992, then some texts came here and there stating that there are certain papers that if they include some conditions, then they are considered an executive document and this was not an explicit text but an implicit reference such as Articles 1340 And before it, Article 1320 of the UAE Civil Transactions Law, this matter led to a dispute between the courts of the United Arab Emirates. While we see the Dubai Court of Cassation being bound by Article 225 of the UAE Civil Procedure Law, on the other hand, the Abu Dhabi Court of Cassation believes that the pledge bond is considered a bond. Implementation if it includes some of the conditions that we will explain in the research and this is what we will explain in this humble research paper.

The executive document is the source of the right to implement and without it, no right can be obtained (), and this is what Article 225 of the UAE Civil Procedures Law expressed at its inception that (implementation can only be done by an executive document ...), but what is Business promoted by the legislator and made to rise to the ranks of executive bonds.

The mortgagee, after registering the mortgage and fulfilling the substantive and formal conditions, gets a bond called (mortgage bond). The question then is whether this bond is considered an executive bond and can be executed without requiring the mortgagee to review the courts to obtain a ruling on that, or not?

With reference to Articles 225 of the Civil Procedure Law and Article 1340 of the Civil Transactions Law¹⁷, we find that the text in Article 225 states in Paragraph 2 / d that no paper can be executed unless the law gives it the power of an executive document¹⁸. Then with reference to Article 1340 of the Law Civil transactions, we find that they say: (To the mortgagee, the mortgagee, in the security case, I take measures to seize the ownership of the mortgaged property and sell it if the debt is not paid in its time, according to the procedures stipulated in the law of procedures before the civil courts and the special laws)¹⁹. In that, it has said that the mortgage bond has the power of the executive bond when it fulfills all the objective and formal conditions, as it includes a debt that is fulfilled and a certain amount and performance. What is the wisdom after that of returning the mortgagee to the courts and obliging him to obtain a court ruling on that²⁰.

Either if the debtor raises objective arguments related to the payment of his part of the debt (or if the debt claimed by him includes vehicle benefits - for example - then the cases of urgent matters - or the execution judge - are not concerned with this and the conclusion of his task is to place the execution formula on the contract, and the litigants have the litigation about the subject matter of the dispute.

6. Conclusion

We came through this study to several results, namely

First: The current debtor may deceive the banks (the mortgagee creditor) to mortgage the residential house and then protest at the time of the auction that the family home is not for sale according to Article 247/2 of the UAE Civil Procedures Law, and this matter often succeeds for two reasons, firstly the existence of an explicit provision that protects The residential home, secondly, the judges 'sympathy with the family home and its protection from the indiscretion of the head of the family, but this matter needs to be reconsidered because it caused a great loss to the banks (the mortgagee creditor).

Second: We found that some laws, including Article 10 of the Local Insurance Mortgage Law of the Emirate of Dubai, No. 14 of 2008, determine that the mortgagor's behavior in the mortgaged property is invalid without obtaining the mortgagee's approval, meaning that the penalty is null. We find that the text of this article is unsuccessful, as the creditor has the authority to follow the mortgaged property in whatever hand it is and obtain his right from its price, and

therefore we see that there is no difference between the mortgaged property remaining with the current or its transfer to the owner

Third: There is a disagreement in the laws of the Emirates state regarding the validity of the insurance mortgage if it is placed on a property that does not exist at the moment of the mortgage. The Civil Transactions Law decides the invalidity of such a mortgage, and in return the insurance mortgage law in the Emirate of Dubai determines the validity of this mortgage because the existence of the property is a judgmental existence that is represented by the primary document Hand over to the owner.

Fourth: We also noted that the mortgage bond is considered an executive bond before some courts and other courts, which are not crossed by an executive bond.

7. Recommendations

After the previous study, we recommend the following

First: The necessity to provide protection to the mortgagee from fraud by the current debtor and mortgage him to the residential house, then to protest that it is not permissible to sell it, and that is by stating a text permitting the sale of the residential house if the current debtor has proven fraudulent, as fraud spoils everything.

Second: We propose to abolish Article 10 of the Local Insurance Mortgage Law of the Emirate of Dubai, No. 14 of 2008. It is decided that the mortgagor's behavior in the mortgaged property is invalid without obtaining the approval of the mortgagee, as we find that it is unjustified and empties the mortgage from its credit content.

Third: We also suggest canceling the text that establishes the validity of the mortgage of the property despite its absence at the moment of the mortgage, because this matter in fact does not arrange a personal right on the property for a simple reason that it does not exist at the moment of the mortgage, but gives the second party a personal right only.

Fourth: Finally, we suggest that there be a text stating that any paper that is free of suspicion and has a fixed right that deserves to be paid and which is not disputed shall be considered an executive document if it is presented to the execution judge what the executor is subjected to against him .

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- 1- Samir Abdel-SayedTanagu, In-Kind Insurances for Aircraft According to the Geneva Convention of 1948, a research published in the Journal of Legal and Economic Sciences, published by the Faculty of Law at Ain Shams University, Second Issue, Seventh Year, 1965.
- 2- SaeedSaad Abdel Salam, Al Wajeez in Affiliate Rights in Kind, Al Wala Modern Press, Cairo, 2004.
- 3- Mansour Mostafa Mansour, In-Kind Insurance, International Press, Alexandria, 1963.
- 4- Hammam Muhammad Mahmoud Zahran, In-Kind and Personal Insurances, In-Kind Insurances, University Publications House, Alexandria, 2004.
- 5- Muhammad Ali Imam, Personal and In-Kind Insurances, NahdetMisr Press, Cairo, 1956.
- 6- Nabil Ibrahim Saad, In-Kind and Personal Insurances, Al Ma'arif Establishment, Alexandria, 1982.
- 7- Nasr Abul-FotouhFarid, Rights in Kind, Dar Al-Nahda, Emirates, 2015.
- 8- Ahmed KhalifaSharqawi Ahmed, Executive Force of documented female editors, The New University House, 2007.
- 9- UAE Civil Transactions Law.
- 10- Kuwaiti Civil Law, issued by Decree Law No. 67 of 1980
- 11- Dubai Local Law No. 13 of 2008 Regulating the Land Registry, Executive Regulations No. 6 of 2010 for this Law.

Footnotes:

- 1- See Articles 971-1026 of the Kuwaiti Civil Code issued by Decree Law No. 67 of 1980 published in the Official Gazette in Kuwait Al-Youm on 1-5-1981.
- 2- The basic principle is that all things are subject to dealing unless their nature or the text of the law require otherwise. See the text of Articles (97,98) of the UAE Civil Transactions Law.
- 3- Samir Abdel-SayedTanago looks at, In-Kind Insurances on Aircraft According to the Geneva Convention of 1948, a research published in the Journal of Legal and Economic Sciences, issued by the Faculty of Law at Ain Shams University, Issue Two, Seventh Year, 1965, p. 161.

- 4- SaeedSaad Abdel Salam, *Al-Wajeez considers in subsidiary rights in kind*, Al-Wala Modern Press, Cairo, 2004, p. 204 - Mansour Mustafa Mansour, *In-Kind Assurances*, International Press, Alexandria, 1963, p. 25 - Hammam Muhammad Mahmoud Zahran, *In-kind and personal insurances, in-kind insurance*, University Press, Alexandria, 2004, p. 272.
- 5- Muhammad Ali Imam, *Personal and In-Kind Insurances*, NahdetMisr Press, Cairo, 1956, p. 258, and Nabil Ibrahim Saad, *Personal and In-Kind Insurances*, Al Maarif Institute, Alexandria, 1982, p. 49.
- 6- Muhammad Taha Al-Bashir, *Al-Wajeez in Affiliated Rights*, Previous source, p. 46, Waheed Al-Din Swar, previous source, p. 191.
- 7- Article 247 of the UAE Civil Procedures Law stipulates that: (Without prejudice to what is stipulated in any other law, it is not permissible to seize the following: ... / 2- The house that is the residence of the debtor or the convicted person and whoever lives with him from among his dependent relatives Sharia in the event of his death).
- 8- The United Arab Emirates | Federal Supreme Court - Civil and Commercial Judgments | Appeal No. 606 of 2008: Judicial dated 06/14/2010. Published in the East Laws Network.
- 9- Ramadan Abu Al-Saud, Mohammadi Suleiman, the previous source, pp. 19-20.
- 10- Abu Al-Saud, the same source, p. 349-Al-Bashir, p. 416.
- 11- Ali Hadi Al-Obaidi, *Personal and In-Kind Assurances*, the previous source, p. 148.
- 12- Government of Dubai | Court of Cassation - Civil Judgments | Appeal No. 221 of 2006, Judicial dated 12/17/2006, published in the East Laws Network.
- 13- See Appeal No. 133 of 2015 issued by the Abu Dhabi Court of Cassation - Civil and Commercial Judgments - issued on 12-15-2015, in which it stated: (... and what the contested judgment stated in its codes that the division of the land is subject to the approval of the mortgage authorities. " Contrary to the law, which did not stipulate that the application for parceling and setting aside the mortgaged land be subject to the prior approval of the mortgagee, who may not object to the request unless it is proven that the division of the mortgaged land results in a diminution of the guarantees he has on the mortgaged property, which is what the case papers are missing. What was mentioned was that the appealed judgment when it was decided to reject the case on the grounds that the division of the mortgaged property requires the consent of the mortgagee creditor and that the division would harm the rights of the mortgagee, while the case papers were devoid of any evidence of this, he violated Articles 1412 and 1414 of the Law Civil transactions and the first article of the Evidence

Law, including its defect and necessitating its revocation, provided that with the cassation the referral is due to the fact that the case is not suitable for adjudication).

- 14- Nasr Abul-FotouhFarid, the previous source, p. 162.431
- 15- See Article 6 of the Local Law of the Emirate of Dubai No. 13 of 2008 regarding the regulation of the real estate registry, Executive Regulations No. 6 of 2010 of this law.
- 16- Dr. Ahmed KhalifaSharqawi Ahmed, Executive Force for documented female editors, The New University House, 2007, p. 498.
- 17- Article 225 of the UAE Civil Procedures Law stipulates that: (
 - 1 - It is not permissible to enforce compulsory enforcement of an execution requiring the right of existence and a certain amount of performance.
 - 2- The executive bonds are:
 - A- Judgments and orders.
 - B- The documents documented according to the governing law for authentication and certification.
 - C- Reconciliation records certified by the courts.
 - D- The other papers that the law gives this characteristic ...)
- 18- Government of Dubai | Court of Cassation - Civil Judgments | Appeal No. 9 of 2009, judicial date: 01-31-2010; Government of Dubai | Court of Cassation - Civil Judgments | Appeal No. 217 for the year: 2006, judicial date: 12/11/2006; Government of Dubai | Court of Cassation - Civil Judgments | Appeal No. 230 of: 2004 Judicial Date: 19-12-2004.
- 19- Appeal No. 541 for the year: 18 Judicial | Federal Supreme Court - Civil and Commercial Judgments | Dated: 1-25-1998; and Appeal No. 606 of the Federal Supreme Court - Civil and Commercial Judgments | For the year: 2008, a judicial date: 06/14/2010.
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