

The meaning of priority of bona fides person acquiring a right in land-registry services

In a recently rendered decision of the Hungarian Curia, the chamber was raising the question of the following issue. Namely, if there is any chance, that a right acquired under an agreement, but not registered in Real Estate Register, is prior to a right acquired under an agreement concluded later but registered in the Real Estate Register.

The chamber of the Curia established important doctrines in its decision n° 2017.340. In accordance with that the chamber emphasized, if the resolution of the land-registry wrongly did not record the applicant's right acquired under some agreement, the only way the applicant could exercise his or her right is without the violation the right of the third party, bona fides person, which had been acquired in good faith, in the course of trade for consideration. According to the statement of the plaintiff, the land-registry skipped to register his or her right of support in the Real Estate Register. After more, than ten years later, a mortgage granted on the real estate property was registered.

The question is whether the plaintiff legitimately requested the registration of his or her right of as an entry of record prior to the mortgage in the ranking of records.

The Curia declared, that in case the incorrect content of the Real Estate Register is caused directly by the wrongful procedure of the land-registry, the applicant's possibilities of seeking review have to be exhausted, and after no remedy remained in the field, the applicant can turn to jurisdiction of the courts in order to correct the content of the resolution of the land-registry. [Section 62. par. (1) point b, Act CXLI of 1997.]

The reason of the provision of the Act referred above is that by omitting to appeal against the resolution of the land-registry, the applicant herself, or himself does not close fully the procedure of the land-registry. Although it is not accompanied by the loss of rights but it will not enable the applicant to take actions against the third party, bona fides persons, who had acquired their rights in good faith, in the course of trade for consideration, such as the claimant of the mortgage in the present case. Having regard to the factual ground of this case, the parties did not appeal against the resolution of the land-registry, the entry of record of the claimant of the mortgage became definitely prior to the entry of record of the applicant's right of support. Practically speaking it means that if the claimant of mortgage seeks satisfaction of his or her claims from the purchase price of the sale of the real estate property, the applicant will be obligated to tolerate it.

In conclusion, the main obligation of the claimants of rights in the procedures of the land-registry is to supervise whether their rights acquired under some agreement was correctly registered in the Real Estate Register.

Since, by not seeking remedy for the correction of the content of entry of record during the procedure of the land-registry, then later the claim will not be enforceable in a judicial proceeding against a third party, bona fides person, who acquired his or her right in good faith, in the course of trade for consideration.