

Research on Chattel Mortgage Contract in China's Civil Code

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Abstract: Article 403 of the Civil Code of China, which inherits Article 188 of the original Property Rights Law, adopts a registration-against system for chattel mortgages. However, there is still no explicit provision on the effectiveness of unregistered chattel mortgage rights, and the academic community has yet to reach a consensus. This paper focuses on the controversy surrounding the nature of chattel mortgage contracts. After discussing the differences between "credit contracts" and "property right," it explores the burden and disposition actions involved in establishing chattel mortgage rights, thus summarizing the property rights attributes of unregistered chattel mortgage rights in China.

1. Introduction

The chattel mortgage system plays a foundational role within the framework of chattel collateral transactions. According to Article 403 of China's Civil Code, chattel mortgage rights are established as soon as the chattel mortgage contract becomes effective. While the contract may specify conditions or timing for effectiveness, it cannot restrict the establishment of these rights. Despite the legislative maturity of Article 403, a comprehensive examination of the chattel mortgage system is essential, covering its intrinsic meaning, institutional framework, and its relationship with property rights law.^[1]

As a result, there are institutional and conceptual contradictions in interpreting and applying the chattel mortgage system. To ensure the smooth operation of collateral transactions, a thorough review and optimization of chattel mortgage rules are necessary.

2. Dispute as to the nature of the movable property mortgage contract

In the field of chattel security law, precisely defining the nature of a chattel mortgage contract is of paramount importance. China's Civil Code and the former Property Rights Law have refrained from providing explicit provisions regarding the effectiveness of unregistered chattel mortgage rights, leading to division within the scholarly community. Consequently, understanding the nature and effectiveness of chattel mortgage rights becomes the fundamental starting point for research, necessitating a comprehensive exploration.^[2]

One perspective suggests that, at its core, we should categorize a chattel mortgage contract as a debt contract. China's legal framework of chattel security adheres to the registration opposition principle. This rule holds a latent significance, indicating that establishing a chattel mortgage right

occurs concurrently with the effectiveness of the debt contract, without the need for specific formal requirements like registration or delivery. The chattel mortgage contract represents an agreement between parties to create a right against a person, with the characteristic of immediately constituting a debt. It signifies the mortgagor's right established through delivery. While it possesses a certain degree of absoluteness, the unregistered chattel mortgage right is more accurately considered as the absolutization of a relative right, and its payment priority also manifests relative legal relations.^[3]

An alternative viewpoint suggests we should see a chattel mortgage contract as a pure property rights contract. Establishing a chattel mortgage right is not contingent upon the existence of a debt. However, instead, it is established upon the conclusion of the contract, with its primary content centered around the consensus of property rights. The chattel mortgage contract directly leads to changes in property rights, categorizing it as a type of real rights contract.^[4]

Within China's Civil Code, chattel mortgages fall under the scope of encumbered property rights in the Property Rights Compilation, a practice that has had significant theoretical and practical consequences. This provision has made the logical structure of the entire Civil Code system somewhat unclear. The unexpected outcome of debt contracts directly conferring property rights effects blurs the fundamental distinction between debt and property rights.

3. Analysis of the nature of a chattel mortgage contract

The categorization of a chattel mortgage contract as either a debt contract or a property rights contract needs to be more complex. In terms of interpretation, adhering to the Civil Code's bifurcated property and debt rights system is crucial to ensure precise contract interpretation. According to the Civil Code, at the moment of contract effectiveness, the chattel mortgage right is established, inherently comprising both encumbrance and disposition components.^[5] To view a chattel mortgage contract solely as a contract of encumbrance would result in a debt-credit relationship with specific performance as the object, but it would not create a legal relationship governed by property rights. Recognizing the intention of a property rights consensus is necessary to understand this legislative norm and rectify the misconception of property rights originating from a debt contract.

Characterizing a chattel mortgage contract solely as a property rights contract overlooks the potential existence of debt claim rights. When the mortgagor lacks the authority to dispose of the encumbered property and has not yet obtained recognition from the owner, they cannot establish the chattel mortgage right. However, due to the concurrent effect of a chattel mortgage contract as a debt contract, the mortgagee can still assert debt claim rights for redress.

Therefore, in the property rights alteration model of registration opposition, chattel mortgage contracts exhibit a dualistic structure characteristic of a proprietary contract. The consensus between the parties embodies a composite feature, encompassing both debt consensus and property rights consensus. In this model, the mortgage right, as one party's commitment to grant a right to the other party, establishes an intended debt between the parties. When the parties' consensus aligns, the chattel mortgage right takes shape and property rights alteration results from commitment in practice. Consequently, this mortgage contract has the effects of debt law and holds the power of property rights. In the absence of specific provisions, both the encumbrance and disposition components come into effect simultaneously.^[6]

4. Determining the Nature of Unregistered Chattel Mortgage Rights

When exploring the nature of unregistered chattel mortgage rights, precisely defining their status and effectiveness within the legal system is crucial. Central to this inquiry is whether unregistered chattel mortgage rights can maintain their property rights attributes without conflicting with bona fide third parties or if they might transform into general debt claims.

Some scholars argue that unregistered mortgages, lacking registration-based publicity, do not possess the typical characteristics of property rights but instead align with the nature of ordinary debt claims. They base this on the inability of chattel mortgage rights to withstand third-party claims, which is inconsistent with the dominion and exclusivity associated with property rights. On the other hand, other scholars contend that chattel mortgages should not be perceived as typical property rights but as institutional tools for securing debt claims. They emphasize that the chattel mortgage registration system is more about disclosing information and warning third parties than substantively determining property rights.

However, this article leans toward the perspective that unregistered chattel mortgage rights should be considered property rights, representing an intermediate state between pure debt rights and pure property rights, often described as "more than a debt, less than a property right." Although the mortgagee already possesses a debt right in this intermediate state, it has yet to fully transform into a property right with complete effectiveness against the world, as it has yet to undergo public registration. This perspective places unregistered chattel mortgage rights in a unique state between pure debt and property rights, a view supported by several considerations.

Firstly, unregistered chattel mortgage rights exhibit dominance when realizing the rights. In non-performance by the debtor or situations requiring mortgage enforcement, the mortgagee can directly apply to the local court to enforce the mortgage right. Secondly, unregistered chattel mortgage rights confer the effectiveness of priority repayment. When the secured debt has not been satisfied, the mortgagee has the right to sell the mortgaged chattel to satisfy the debt, thereby enjoying priority over other creditors. Furthermore, despite potential limitations on its absolute nature, unregistered chattel mortgage rights maintain a relatively strong degree of absoluteness regarding exercising rights related to the mortgaged property. These rights not only take effect between the parties but also can be asserted against third parties, including bona fide third parties, general creditors, and wrongdoers, to a significant extent.

In conclusion, the nature of unregistered chattel mortgage rights is a complex and debated issue within legal scholarship. While some argue that they resemble ordinary debt claims due to their lack of registration-based publicity, this article has advocated considering them as property rights in an intermediate state. This perspective aligns with the practical attributes exhibited by unregistered chattel mortgage rights, such as their ability to enforce dominion over the mortgaged property, establish priority in debt repayment, and significantly assert rights against third parties. It is essential to recognize that while unregistered chattel mortgage rights may not be fully equivalent to registered property rights, they occupy a unique position between pure debt and property rights, providing a valuable legal tool for securing debt claims while preserving specific property-like attributes. This nuanced understanding can contribute to a more comprehensive and balanced assessment of the legal status and effectiveness of unregistered chattel mortgage rights in the legal system.

5. Conclusion

Non-possessory security transactions serve a primary economic function: managing and mitigating credit risks while not impeding the productive capacity of collateral and debtors. Consequently, non-possessory security rights have gained broad acceptance. In China's Civil Code, the chattel mortgage contract not only imposes a burden but also involves disposing of the mortgagor's ownership rights, creating a fusion of debt and property actions, thus exhibiting a composite characteristic. In line with the principle of private law autonomy, it becomes essential to discern between debt and property intentions when establishing chattel mortgage rights. By upholding the fundamental separation of property and debt, we recognize that unregistered chattel mortgage rights still belong to the realm of property rights.

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