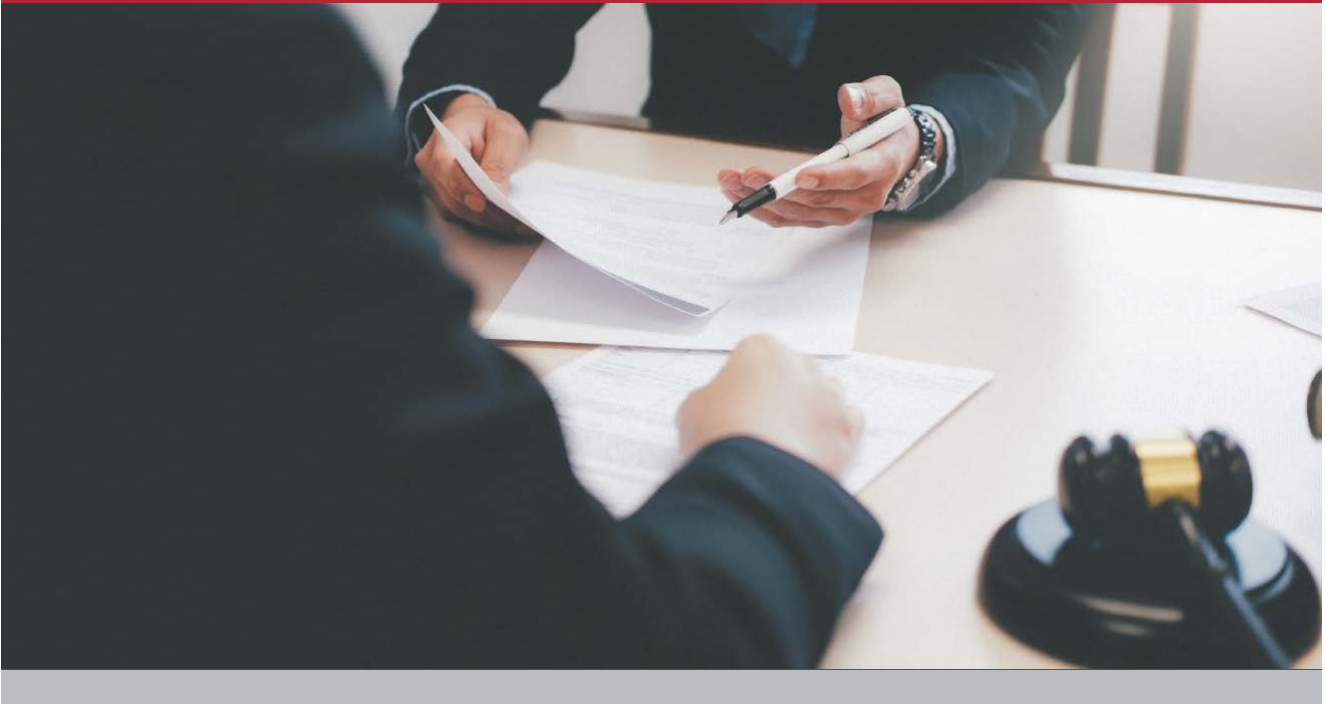


**Can the property of a bankrupt individual be sold without the participation of the pledgee?
(Ruling No. 310-ES21-6469 of the Supreme Court of the Russian Federation dated 1 September 2021)**



In the bankruptcy case of a debtor (individual), the financial administrator filed a petition in court for approval of Regulations on the Procedure for the Sale of the Car of the Debtor.

In the opinion of the debtor, the Regulations should have stated that the car had been pledged with a third party (legal entity) to ensure the performance of obligations under a loan agreement.

The financial administrator objected and noted that the claim of the pledgee had not been included in the creditor claims' register. Consequently, the contested property may not be sold as property encumbered by a pledge.

The courts of all three instances supported the debtor's position, holding that the inclusion of the claim of the pledgee in the creditor claims' register only affects the exercise thereby of the pledgee's

rights in a bankruptcy case, while the pledge retains force from the perspective of substantive law, irrespective of whether the pledgee participates in the bankruptcy case of the pledgor or not.

The Supreme Court of the Russian Federation disagreed with this approach, stating:

- The approach drafted in 2009 is no longer relevant (namely Clause 18 of Judgment No. 58 of the Plenum of the Supreme Commercial Court of the Russian Federation dated 23 July 2009 “On Certain Issues Related to the Satisfaction of the Claims of a Pledgee in the Bankruptcy of a Pledgor”).
- Pursuant to legal regulation in effect at present, after the sale of pledged property in a bankruptcy case, the pledge ceases and the property is transferred to the buyer free of any encumbrances.
- In such cases, any pledge creditor that failed to submit their own claims in a bankruptcy case forfeits their rights to said property and may not file a claim for the receipt of the proceeds from its sale.
- The conclusions of the courts that information on the encumbrance of the car by a pledge must be indicated in the text of the regulations are mistaken.
- A similar approach has been adopted in instances of the bankruptcy of legal entities (Ruling No. 308-ES16-1368 of the Supreme Court of the Russian Federation dated 26 May 2016).

Kind regards,

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