

Clarifications of the Supreme Court of Ukraine

In March 2015, the Supreme Court of Ukraine (the SCU) clarified some aspects of application of legislation on foreclosure on the mortgage by notaries and joint and several liability of sureties.

In case No.6-141уc14 the SCU confirmed the ruling of the lower court on illegality of the executive notary enforcement in a dispute. Thus, the court clarified that in accordance with the Article 87 of the Law of Ukraine on notaries, in order to foreclose on funds or reclaim property the notaries execute enforcement on documents that establish indebtedness. The list of documents required for the undisputed procedure for foreclosure of indebtedness through executive notary enforcement is specified by the Cabinet of Ministers of Ukraine.

In accordance with clause 1 of the Resolution of the Cabinet of Ministers No. 1772 dated 29 June 1999 on the list of documents required for executive notary enforcement, the original of the notarized agreement, documents confirming undisputed indebtedness of a debtor and late performance of obligations are required in order to foreclose on the notarized agreements.

Therefore, in the opinion of the SCU, if at the time of executive notary enforcement there was a court dispute on the amount of indebtedness under the credit agreement, there is no undisputed indebtedness of a debtor.

In the other case No. 6-35уc15 the SCU stated that the sureties under different agreements with the debtor are not jointly and severally liable before the creditor. Therefore, the creditors are entitled to submit a claim to the sureties only on the basis of the existing agreement.