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SOME PROBLEMS OF LEGAL REGULATION OF PROPERTY
RIGHTS PROTECTION IN MARITIME TRANSPORT

Andrey Viktorovich Semyonov (a)*

*Corresponding author

(a) Admiral Ushakov Maritime State University, Russia, novolawyer@inbox.ru

Abstract

The most important place in the defence of the right of ownership is occupied by property law suits which is specifically aimed at the protection of the absolute right of ownership. The law allows the owner of property, as well as the holder of other proprietary right, to reclaim property from someone else's unlawful possession by bringing a vindication action. The purpose of the work is to establish the legal framework for the regulation of the reclamation of property from the unlawful possession of others in relation to the objects of maritime transport. Materials of judicial and arbitration practice are used, the comparative legal method of research is applied. Problematic issues related to the rights to property in maritime transport are an urgent problem in modern legislation. The solution of these issues will be useful for law enforcement activity. The author investigates problematic issues that can be used in professional and pedagogical activities.

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1. Introduction

A vindication action in relation to maritime transport is a claim by the owner or the holder of another proprietary right to an object belonging to the group of maritime transport to recover this thing from someone else's unlawful possession. In other words, it is a claim by a non-owner owner against a non-owner owner of maritime transport for the return of the property.

The application of a vindication claim means that the interested party makes a substantive legal claim in court for the return of the property. That is, its property is from the possession of the person who illegally owns this property. In accordance with Article 301 of the Civil Code of the Russian Federation, the owner has the right to reclaim his property from someone else's unlawful possession, which is, in fact, the normative embodiment of the concept of a vindication claim (Mele, 2022; Nikulin, 2023; Rawel, 2022).

The parties that claim for recovery of maritime transport from unlawful possession are the owner, who does not have actual possession of the thing claimed, and the actual owner of the thing, its holder, who is not its legal owner, as the grounds of its ownership are unlawful. The plaintiff's claim is that the defendant should return the thing. Such action would restore the owner's right of possession and eliminate violations of the right of ownership.

The main features of the infringed right of the titleholder, which would allow the use of such remedy as a vindication action, are:

- i. retirement of a thing from the possession of the owner;
- ii. ability to distinguish a thing by means of individual features from homogeneous things;
- iii. thing coming into the possession of a non-owner for unlawful reasons;
- iv. refusal of a non-owner to honour the owner's demand for the return of the thing to him.

The development of maritime activities is inevitable.

In order to understand the problems of vindication in maritime transport, it is necessary to analyse the legislation and judicial and arbitration practice.

2. Problem Statement

A necessary and sufficient condition for a claim for recovery of property from someone else's unlawful possession is the totality of these four features. If at least one of these circumstances is absent, it will not be possible to assert a vindication claim. For example, if the property has not left the possession of the owner, or the illegal owner agrees to return the thing to the owner, as well as if the thing is in the possession of the non-owner on a legal basis (lease agreement), it makes no sense to claim for the recovery of the thing from someone else's illegal possession (Collet-Sabé, 2023; Manakbayeva, 2023; Sheveleva, 2024).

The conditions for filing a vindication claim were highlighted in p. 22 of the Resolution of the Plenum of the Supreme Arbitration Court of 25.02.1998 No. 8 "On Certain Issues of Practice in Resolving Disputes Related to the Protection of Ownership and Other Proprietary Rights". According to them, when applying Article 301 of the Civil Code of the RF, it should be borne in mind that the owner has the right to reclaim his property from the person who actually has the property in illegal possession. A

claim for reclamation of property brought against a person in whose unlawful possession the property was, but who does not have it by the time of consideration of the case in court, cannot be satisfied.

In accordance with Article 301 of the Civil Code of the Russian Federation, a person who has applied to the court with a claim to reclaim his property from the unlawful possession of others must prove his title to the property in the possession of the defendant.

The subject of a vindication action is the claim of a titleholder who does not own a thing against a person who illegally owns it for its return. This property must be individually determined. It is necessary to distinguish between the subject of the claim and the subject of proof in the vindication process. The subject of proof is the question of the illegality of the defendant's possession of the disputed property, as well as proving the defendant's bad faith in acquiring the property or the gratuitousness of the acquisition, when the satisfaction of the claim depends on this circumstance (Giza, 2024; Mambetova et al., 2024; Mascareno & Chavez, 2024).

The main purpose of a vindictive action is related to the transfer of the property to the proper owner. However, prior to the court judgement that will put an end to the dispute, it is assumed that both the plaintiff and the defendant may be the holders of the right of ownership. Their procedural status under the law is equal. Although, according to the presumption of guilt operating in civil law and procedure, it is initially presumed that the plaintiff is the bearer of the right and he has to prove it. And the defendant is the guilty person who also has to prove his innocence and right to the thing in question. Hence, the right can be proved by each party. However, the defendant continues to be the actual owner of the thing until the judgement of the court, which shows that he has advantages over the plaintiff. But at the same time, in accordance with the procedural legislation, the plaintiff may apply for measures to secure the claim, such as seizure of the defendant's property (article 72 of the APC RF).

The plaintiff and the defendant must independently prove their right to the property. The plaintiff, filing a claim, relies on his legal title of possession of the thing. According to a number of scholars, the common legal basis for all vindication claims is the right of possession of the claimed thing. However, in Russian law, there is no special right of possession, but only the right of possession, which is a part of various subjective rights.

Therefore, paragraph 36 of the Resolution of the Plenum of the Supreme Court of the Russian Federation N 10, Plenum of the Supreme Court of the Russian Federation N 22 of 29 April 2010 "On some issues arising in judicial practice in resolving disputes related to the protection of ownership and other proprietary rights" noted the following. "In accordance with Article 301 of the Civil Code of the Russian Federation, a person who has applied to court with a claim for the recovery of its property from someone else's illegal possession must prove its ownership of the property in the possession of the defendant. The right of ownership of movable property shall be proved by means of any evidence provided for by the procedural law, confirming the emergence of this right from the plaintiff".

The proof of ownership of maritime transport is an extract from the State Ship Register of the port. In the absence of state registration, the right of ownership shall be proved by means of any evidence provided for by the procedural legislation, confirming the emergence of this right from the claimant.

In accordance with paragraph 2 of article 15 of the Code of Inland Water Transport of the Russian Federation, the right of ownership of a vessel or part of a vessel arises from the moment of state

registration of such right in the State Ship Register, the Russian International Register of Vessels or the register of small vessels.

In accordance with clause 1 of article 16 of the Code of Inland Water Transport of the Russian Federation, a vessel is subject to state registration in one of the registers of vessels of the Russian Federation specified in this clause. These are the State Ship Register; the register of small vessels; the register of leased foreign vessels; the Russian International Register of Vessels; the register of vessels under construction.

State registration of a vessel and rights to it means the act of recognition and confirmation by the state of the emergence, restriction (encumbrance), transfer or termination of rights to the vessel in accordance with civil legislation (clause 3, article 16 of the Code of Inland Water Transport of the Russian Federation).

Title and other rights in rem to a vessel are subject to state registration. Along with the state registration of rights to the vessel, restrictions (encumbrances) of these rights, as well as other transactions with the vessel subject to mandatory state registration in accordance with the legislation of the Russian Federation, are subject to state registration (clause 4 of article 16 of the Code of Inland Water Transport of the Russian Federation).

The state registration of a vessel is the only proof of the existence of the registered right, which can be challenged only in court (clause 5 of article 16 of the Code of Inland Water Transport of the Russian Federation).

Article 21 of the Code of Inland Water Transport of the Russian Federation stipulates that the following vessels are subject to exclusion from the State Ship Register. These are a ship that has perished or gone missing; a ship that is structurally dead; a ship that has lost its qualities as a result of alterations or other changes; a ship that no longer meets the requirements stipulated in paragraph 2 of article 23 (paragraph 1). In order to exclude a ship from the State Ship Register of the Russian Federation, the shipowner must submit to the authority carrying out the state registration of the ship an application and documents confirming the circumstances that were the basis for such exclusion (paragraph 2).

In legal science, one of the classical postulates of the doctrine of vindication is the thesis that it is aimed at the return of the very property, the possession of which was lost. Therefore, the object of vindication is always an individually determined thing preserved in kind. Such claim is not subject to satisfaction in respect of a thing not preserved in kind. In these cases, the plaintiff has a compulsory claim from damages. This position is reproduced almost in the same words in many well-known textbooks and commentaries.

An individually determined thing is the object of any real right to it (including the right of ownership), so the question of the absence of a thing in kind is related to the question of termination of the right of ownership.

In the literature, there is an opinion that a significant change in the characteristics of a real estate object, associated with a change in the purpose of such object and the nature of its use, should be considered as the destruction (destruction) of the thing. This entails the termination of the previously registered title to such real estate object on the basis of paragraph 1 of Article 235 of the Civil Code of the

Russian Federation (Golovina, 2022). Of course, such circumstance cannot be an insignificant change of a thing (for example, current repairs on a ship).

Recognition of the changes as substantial from the point of view of the prospects of the vindication proceedings will mean the following. Since the subject of proof for this claim includes the existence of the plaintiff's ownership right to the claimed thing, such change in the immovable thing automatically deprives the plaintiff of the possibility of winning the process of reclaiming the thing from someone else's unlawful possession. It is impossible to prove a right to something that does not exist (Abramyan & Golubkina, 2019).

Speaking about vindication, one should not forget that today the issues of unlimited and limited vindication remain topical.

The division between them is made on the basis of the good faith of the acquirer of the disputed property. If the acquirer of the disputable thing was not in good faith, the thing shall be reclaimed from him in any case. And in accordance with paragraph 2 of Article 302 of the Civil Code of the Russian Federation, if the property was acquired gratuitously from a person who had no right to alienate it, the owner has the right to reclaim the property in all cases: this is the principle of unlimited vindication.

Limited vindication is such vindication, which assumes that the owner will be able to reclaim his property only under certain conditions provided for by law (Zaslono et al., 2020). In accordance with Article 302 of the Civil Code of the Russian Federation, if the property was acquired for compensation from a person who had no right to alienate it, which the purchaser did not know and could not have known (bona fide purchaser), the owner has the right to reclaim this property from the purchaser. It can happen in the event when the property is lost by the owner or by the person to whom the property was transferred by the owner into possession, or stolen from either of them, or withdrawn from their possession by other means without their will.

Hence, it turns out that the owner cannot always reclaim his property from someone else's possession, and the law allows it, because not only his interests may be affected, but also the interests of a bona fide purchaser. To begin with, it is necessary to understand who a bona fide purchaser is and under what conditions his rights to the disputed property may be protected.

The Civil Code of the Russian Federation does not contain the concept of "good faith" as such. However, it defines that a person who did not know and could not have known that he acquires a thing from a person who had no right to alienate it (Article 302 of the Civil Code of the Russian Federation) is considered to be a person in good faith. According to some scholars, the words "did not know and could not have known" mean that it is not enough that the trustor (the person who alienates the thing) was mistaken about the necessary authorisation. It is also required that the mistake was apologetic, i.e. that it could not be blamed on the acquirer.

3. Research Questions

Property law suits is specifically aimed at the protection of the absolute right of ownership. The law allows the owner of property, as well as the holder of other proprietary right, to reclaim property from someone else's unlawful possession by bringing a vindication action. Problematic issues related to the

rights to property in maritime transport are an urgent problem in modern legislation. Materials of judicial and arbitration practice are used.

4. Purpose of the Study

The purpose of the study is to establish the legal framework for the regulation of the reclamation of property from the unlawful possession of others in relation to the objects of maritime transport.

5. Research Methods

Within the framework of this issue, the concept of good faith is revealed through such concepts as the absence of simple or gross negligence (Dobrovinskaya, 2017). However, these concepts refer to such state of the subject as guilt. It turns out as follows: the acquirer made a mistake in the form of gross negligence, i.e. it turns out that he is guilty of his negligence and should be responsible for it. However, he is not only not responsible for his mistake, but he is not deprived of the acquired property due to his good faith. It turns out that guilt and good faith are two independent concepts. Moreover, in the legislation there are no norms linking good faith with the signs of guilt. Therefore, it is necessary to have such sign that would characterise good faith from the position of deliberation of his actions by the purchaser of the thing. It can be attributed to the sign of reasonable diligence and caution. A reasonable person realises all circumstances and consequences of his actions.

According to some researchers, the acquirer's negligence is in principle permissible, i.e. it is quite possible that the person looked around but never became aware of the defects of the acquisition (Erdelevsky, 2014). When the indiscretion is the result of reasonable behaviour, the person should be recognised as a person in good faith. If the lack of information is due to a failure to act reasonably, the negligence will fall outside the bounds of good faith, and will therefore fit into the "space" of the category of bad faith. One can agree with this statement, because a person, making a transaction, should always assume that the counterparty may mislead about his right to the given thing, and if the slightest doubt appears, he can refuse to conclude the contract.

In view of this, in the decision of the Arbitration Court of Krasnodar region (Case No. A-32-38628/2011) dated 21.08.2012 the court found the following. "If property is acquired gratuitously from a person who did not have right to alienate it, which the acquirer did not know and could not have known, the owner has right to reclaim this property from the acquirer in case when the property is lost by the owner or gone out of his possession apart from his will (Art. 302 of the Civil Code of the Russian Federation). A person may be recognised as a bona fide purchaser of property provided that the transaction, under which he received the disputed property, meets all the signs of validity, except that it was made by an unauthorised person.

Hence, the court, in order to correctly resolve the present case, must establish whether the defendant is a bona fide purchaser.

In the defendant's opinion, in this court case, it is a bona fide purchaser of the disputed property, which cannot be reclaimed from it due to the loss of this property from the plaintiff's possession by its will.

The defendant's objections about the impossibility of reclaiming the disputed property, as it had left the plaintiff's possession by his will, are based on an incorrect interpretation of the rules of law.

The meaning of Article 302 of the Civil Code of the Russian Federation implies that the owner has no right to reclaim the property provided that the property was disposed of against his will, when the acquirer is bona fide.

6. Findings

- i. The norms of Article 302 of the Civil Code of the Russian Federation to the disputed legal relations are not subject to application.
- ii. The first condition for the protection of the rights of a bona fide purchaser or limitation of vindication is the good faith of the purchaser.
- iii. The second condition is the bona fide purchaser's gratuitous acquisition of the disputed thing, i.e. a certain sum of money that must be paid or other action, which is a counter-provision, must be performed in exchange for its grant of ownership.
- iv. The third condition for restricting vindication is that the property must be out of the possession of the owner or a person authorised by him by their will. The owner is not entitled to reclaim his property from a bona fide purchaser who acquired the property for a consideration if the property has left the possession of the owner by the will of the owner.
- v. There are many gaps, which are currently being filled by the judicial practice of application of the existing provisions.

7. Conclusion

Taking into account the absence of good faith in the actions of the defendant when signing the contract of sale, the norms of Article 302 of the Civil Code of the Russian Federation to the disputed legal relations are not subject to application.

So, the first condition for the protection of the rights of a bona fide purchaser or limitation of vindication is the good faith of the purchaser.

The second condition is the bona fide purchaser's gratuitous acquisition of the disputed thing, i.e. a certain sum of money that must be paid or other action, which is a counter-provision, must be performed in exchange for its grant of ownership. It should be noted that the legislator emphasises that the contract between a bona fide purchaser and an unauthorised alienator has a condition of consideration.

The plaintiff in this category of disputes needs to prove the existence of his ownership right to the disputed property and the fact of illegal use of this property by the defendant.

The third condition for restricting vindication is that the property must be out of the possession of the owner or a person authorised by him by their will. The owner is not entitled to reclaim his property from a bona fide purchaser who acquired the property for a consideration if the property has left the possession of the owner by the will of the owner.

The vindication provided for by the law takes into account the interests of not only the owner but also the bona fide purchaser in a dispute over property, using the principle of "the least evil". However,

the regulatory framework dedicated to this issue is not fully elaborated, there are many gaps, which are currently being filled by the judicial practice of application of the existing provisions.

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