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Securing Debt in Assets in Norway

By Stine D. Snertingdalen & Ingrid Tronshaug



Mortgages, pledges and liens are mainly regulated by the Norwegian Mortgage Act of 8 February 1982 No. 2 (hereinafter referred to as “the Mortgage Act”).

1 Mortgage established through agreement with the owner of the asset

With only few exceptions, all assets may be mortgaged or pledged. A security requires a statutory authority to be valid and legally binding. The Mortgage Act lists most of the assets one may encumber.

1.1 Assets of which ownership is registered in a Norwegian real property register

Ownership, encumbrances and certain other information about real estate, ships and airplanes, are registered in public national registers. Mortgages registered in such a register obtain legal protection and ex-

tinguish any argument from a third party claiming to have been in good faith in assuming that the asset was not encumbered.

1.2 Floating charges and moveable property

One cannot generally pledge “everything that one owns or will own”. It is however possible to get a floating charge over certain categories of assets, including ‘machinery and plant’, ‘inventory’/‘stock’, ‘motor vehicles and construction machines’ and ‘trade receivables’.

A floating charge is registered with a fixed maximum amount and includes all the company’s assets within that category. Only assets which are utilised in a business operation may be included in a floating charge.

Legal protection is obtained by registering the floating charge in the Norwegian Register of Mortgaged

Moveable Properties¹, which will also give protection against alleged bona fide acquirers. This public register also includes a registration of pledges in specified vehicles.

1.3 Vendor’s fixed charge / retention of title

A vendor’s fixed charge or retention of title may be agreed in more or less all types of movable property, to secure the purchase price and any interest and expenses related to the purchase of that specific asset. If the buyer finances the purchase with a loan that is paid directly from the lender to the seller as settlement of the purchase price, a vendor’s fixed charge may also secure such loan.

Such security cannot be agreed for assets registered in an assets register, cf. paragraph 1.1 above, or assets which the buyer has a right to resell before they are paid. The latter requirement rules out the possibility for retention of title in inventory/stock, which seems to be a rather unknown limitation under Norwegian law amongst a number of na-

tional and – in particular – foreign trade creditors.

To obtain legal protection, a vendor’s fixed charge or retention of title must be agreed between the seller and the buyer for that specific asset, stating the purchase price/loan, before the asset is handed over to the buyer. In a transaction between two professional parties, it is sufficient that such agreement is confirmed in writing without undue delay after the asset was handed over to the buyer.

1.4 Financial collateral arrangements

While share pledges in listed companies obtain legal protection upon registration in the relevant register, share pledges in non-listed companies obtain legal protection through notification of the company of which shares are pledged.

“Simple monetary claims”² that someone has or will have against an identifiable debtor, including money credited to a bank account,



can under certain circumstances be pledged, and will obtain legal protection through notification of the debtor.

The Norwegian Financial Collateral Act of 2004 implements the EU directive 2002/47/EF, and regulates financial collateral arrangements that secure obligations a corporate body has towards a financial institution. Examples of such financial collateral are shares and money credited to bank accounts.

The Financial Collateral Act also provides exceptions from the mandatory legal enforcement rules found in the Norwegian Enforcement Act of 1992³, allowing the parties to agree in writing how and when the financial security interest may be legally enforced. As a result, most financial institutions now agree with the debtor that they may take ownership to pledged shares upon default. The Financial Collateral Act also provides a few exemptions from the rules on set-off of security interests.

1.5 Registration of mortgage agreements

Standard forms (in Norwegian) are being used to register mortgages, pledges etc., and the entire registration process can usually be done in a few days if urgent and handled by a professional. The fees for registering a security interest are very modest, ranging from approx. NOK 500 to NOK 2 600 per asset/asset category, including ships and airplanes⁴.

1.6 Pledges / pawns

All assets that cannot be registered in an assets register or comprised by a floating charge may be pawned or pledged, obtaining legal protection through handing the asset over to the pledgee or a third party representing the pledgee. This type of security is rarely used nowadays.

2 Execution liens

If a creditor has an adequate legal basis for legal enforcement, one can deliver a petition for an execution lien in the debtor's assets. With a few exceptions, any asset belonging

to the debtor may be encumbered with an execution lien, and the execution lien may also be effectuated as attachment of earnings. The process of obtaining an execution lien might take months to complete.

An execution lien gives the creditor a lien comparable to a pledge or mortgage, including a foundation for requesting a forced sale of the asset in question.

3 Statutory liens, including the bankruptcy estate's statutory lien

Certain claims are by law secured by a statutory lien, having priority over all encumbrances. An example is the local municipalities' claims for property tax, water and sewerage etc.

The bankruptcy estate is by law granted a statutory lien to secure its necessary expenses with handling the bankruptcy proceedings. The lien is capped to a maximum of 5% of the gross current market value of the assets, and includes all assets provided as voluntary or forced security for the bankrupt person's/

company's obligations, including assets owned by third parties. Assets posed as financial securities (cf. section 1.4 above) are excluded from the bankruptcy estate's statutory lien.

4 Annulment of security interests in case of bankruptcy

A security provided by the debtor later than three months prior to the date of filing for bankruptcy, may be annulled by the trustee if a) the debt secured was established a while before the security interest was agreed between the parties, or b) legal protection was not obtained "without undue delay" (according to case law meaning "within a few days") after the debt was incurred.

An execution lien established in that same three-month-period has no legal effect towards a bankruptcy estate.



Finally, a security interest could under certain conditions be subject to annulment due to fraud on a creditor. Financial collateral arrangements cf. section 1.4 above, may be exempt from these rules on annulment.

Snertingdalen, who has developed an impressive reputation in the insolvency field. “She is one of the brightest talents I have ever seen at such a young age,” enthuses one interviewee.

Stine D. Snertingdalen is a partner at Kvale Advokatfirma DA. She gives legal aid to some of the largest banks in Norway in the area of banking and finance, insolvency regulation, refinancing, credit assurance and credit recovery. Furthermore, Ms. Snertingdalen assists clients with restructuring, and is also frequently appointed as bankruptcy administrator by the Oslo Bankruptcy Court. Thus, Ms. Snertingdalen has experience looking at a case from ‘both sides of the table’ when working with refinancing, restructuring and debt recovery.

Ingrid Tronshaug is a senior associate in Kvale Advokatfirma DA, specialising mainly in insolvency law, including restructuring, bankruptcies and mortgage law, but has also experience with real estate and construction law. She has several years of experience with various insolvency proceedings, including working on some of the largest bankruptcy proceedings and judicial debt negotiation proceedings in Norway. Further, she assists clients with various acts of enforcement of Norwegian and foreign claims.

She regularly holds lectures for Norwegian lawyers and financial institutions, and she is ranked both in Norwegian and international rankings; quoting from Chambers and Partners: “Sources admire the “outstanding and very efficient” Stine

Ms. Tronshaug has an LL.M. in Corporate and Commercial law from the University of Southampton in addition to a Master’s degree in Law from the University of Oslo. She wrote her master thesis on European cross-border insolvencies.



- 1 - ‘Løsøreregisteret’ (brreg.no/English).
- 2 - Monetary claims not attached to an unquoted security, a financial instrument registered in a securities register or redeemable debt instrument.
- 3 - Act of 26 June 1992 no. 86
- 4 - The fee for registering a mortgage in an airplane depends on the size of the claim, though rarely exceeding NOK 16 000.