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Excess in the Pledge of Revenue Percentage: Serious Risk to Business Continuity

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Abstract: This article demonstrates the binomial of risks that threaten the execution phase according to the Brazilian legal system in relation to the interests of the creditor, when an incessant search is created to reach the debtor's assets, sometimes achieving high percentages of the debtor's earnings. The study demonstrates the consequences on the impact of business activity, putting at risk the company's obligations with payments of legal relevance, such as employees and taxes. As part of this study, a brief explanation is made of the principles that guide the execution and assist in its correct application focused on the balance of the creditor-debtor, being presented by the author a summary of the concept and functioning of the implementation process of the executive phase in the Brazilian procedural system, explaining about the weakening of the principles of the social function of enterprises and lower onerity of the debtor until reaching definitions on each term of constriction. Finally, it is demonstrated in practice the attachment of the companies' revenue and its consequences, through real cases where see succeeded in reducing the percentage initially applied, in order to achieve the result to the creditor without seriously injuring the financial health of the debtor undertaking, threatening its bankruptcy.

Keywords: Pledge, Billing, Execution, Principles

1. Introduction

With the advent of the New Brazilian Code of Civil Process, published in 2015 and effective in March 2016, the Civil Process Code (CPC) has been divided into five books: Book I - General Part; Book II - Of the Knowledge Process; Book III - Of the Execution Process; Book IV - Court Proceedings and Means of Challenging Judicial Decisions and Book V - Final and Transitional Provisions.

In this article we will see the main concepts, characteristics and principles of execution, as well as some forms of constriction of the debtor's assets, especially the attachment, capable of generating conflicts in their applications.

this is due to the fact that there are consequences in the realization of each pledge, and should not leave aside the fundamental, basic, principiological rights that are guaranteed to the debtor.

In addition, jurisprudential and doctrinal understandings, such as Araken de Assis, Theodoro Jr., Fábio Ulhôa and the STJ itself guide and balance relations.

Thus, the purpose is to sharpen the critical sense of the reader in order to obtain a fair and courteous executive phase.

In this aspect, theoretical and practical knowledge about species will be used, in order to point out the best analysis and behavior of the Brazilian legal system, focusing on the themes ventilated here, but not exhausted.

2. The Implementation Process and Its Principles

In this topic we will deal only with the executive phase, which is detailed in Book III, that is, the implementation process, which provides for implementation in general.

In the procedural diploma in force, the execution process is disciplined from the article (art.) 771, can be divided into fulfillment of sentence, for judicial executive titles, occurring in the same file; and autonomous execution, for extrajudicial executive titles, occurring in independent records, as the name refers.

Both divisions have the same basis, whatever the title. It is required that the creditor has a title to execute in court exactly

what is in its content. Therefore, as a premise of the executive phase, it is necessary that the title be net, that is, with stipulated value; certain and enforceable, that is, an expired obligation that has not been added.

There are also several defense mechanisms of the executed. For judicial titles the rule is that an objection is offered to the execution of a judgment, while for extrajudicial titles, the rule is that embargoes of the debtor are opposed.

As well as the legal provisions, the principles govern the execution, guiding it, maintaining the balance between relations and legal compliance.

The principles constitute general guidelines of the legal order that serve to confer coherence, understanding of procedural phenomena, and to base and assist in the interpretation of the norms.

With the unification of the legal system through the constitutional text, emphasis is given to the principles, assuming the top of the ordinance since they take the north of the jurisdictional activity. In this sense, the principles can be defined as a set of standards of conduct and interpretation that are present in the parental order, either implicitly or explicitly.

Thus defines Gisele Santos Fernandes Góes in his work, Principle of Proportionality in Civil Procedure, São Paulo, Saraiva, 2004, pp. 16/17:

"There is a convergence among the doctrinators in the sense that the principles occupy an important position in the legal system, since they are general and are based on their orientations, forming themselves as guides of the organization for the interpretation and application of legal norms, whether to give general coherence to the system (Jorge Miranda), or to show its constant contingency (Helenilson Cunha Pontes)" [1].

Since principles are the very axis of law, they deserve to be valued.

2.1. Principle of Utility

This principle states that enforcement must be useful to the creditor and therefore the enforcement procedure is not justified to harm the debtor, without bringing any practical benefit to the creditor.

Based on this principle, the attachment cannot be made when the result of the execution of the goods will be fully absorbed by the payment of the costs of the execution, according to art. 836 of the CPC.

The magistrate must examine whether the execution is useful. If not, it should determine the referral of the execution to the provisional file, situation in which begins to flow the period of the intercurrent prescription:

Thus, highlights Daniel Neves:

Because of this principle, the pledge will not be made when it remains evident that the benefit of the execution of the goods will be fully absorbed by the payment of the costs of the execution (art. 836, caput, CPC) [2].

Neves also highlights the present principle transversely debated by the Superior Court of Justice (STJ) through the Informative n° 426.

2.2. Principle of Least Onerous

Enforcement must seek the right of the creditor, without offending the protection of the debtor as to onerous. Therefore, the form must be the least burdensome possible for the debtor. The law orders the debtor to pay the obligation, but in a less onerous way for him.

This principle means that the enforcement procedure must be conducted in such a way that, satisfying the creditor's right, it is less onerous and detrimental to the debtor. This principle is embodied in art. 805 of the CPC and is an unfolding of the principle of proportionality. As an example of the application of this principle, we have the prohibition of the auction of the debtor's goods by vile price, as disciplined in art.891 of the CPC.

The STJ has consolidated understanding in the sense of no hegemony, in abstract, the principle of least onerous for the debtor on the effectiveness of executive tutelage.

The burden of proving that the execution must take place in the least burdensome form is that of the executed. Faced with such a reality, the unique paragraph of art. 805 of the CPC to say that it is up to the executioner who claims to be the measure intended by the most severe execution, to indicate more effective and less costly means under penalty of maintaining the already determined executive acts.

The problem of the device lies in the requirement that the other means indicated by the executed, in addition to being less costly, be more effective.

However, the replacement of the executive environment does not deserve to be ruled out at all, even when the less expensive one is less effective. It follows that the focus will be on the less expensive and the less effective the means indicated by the executed, depending on the analysis of the specific case.

There is no more effective means for the execution of paying a certain amount than the payment, either by voluntary payment after the debtor's summons/summons or even by the attachment.

2.3. Principle of Due Process

It is known that in the execution process the merit is not discussed, given that the magistrate presumes the existence of the right of execution, derived from the executive title, and the satisfaction of the credit is sought.

Despite the specificity of the executive phase, it is not possible to deny its jurisdictional nature and thus, which is obligatorily characterized as a process that will continue under the examination of the contradictory, guaranteed constitutionally, through the dictates of art. 5th, 4th of the Federal Constitution (CF).

Thus, the judge is called to the file to exercise a material function, but also with a view to resolving various incidental questions of a legal and procedural nature, and it cannot be accepted that the need to carry out the contradictory procedure that can be done, even, through arguments relating to errors or nullities of the pledge, materialized by simple petition in the file.

2.4. Principle of Property Liability

According to this principle, disciplined in art. 789 CPC, only the debtor's or third party's assets may be the subject of the enforcement process. Thus, except the execution of maintenance, listed in art. 5°, LXVII of the CF, the legal system does not admit civil arrest for debts.

In the words of:

It is often said that execution is always real, and never personal, because it is the property of the executioner who is responsible for the satisfaction of the right of execution [3].

Also, for that, it is stressed that the art. 921, III, CPC frustrates enforcement and suspends proceedings when the debtor has no viable assets.

2.5. Principle of the Burden of Enforcement

The basic pillar of execution is the default of the debtor, that is, the breach of an obligation of a certain and enforceable nature.

From this premise, it is admitted to the executed to bear with what stems from the inadequacy of their obligation. This principle ensures that the expenditure within the implementation process runs to the executed.

2.6. Principle of Availability of Implementation

According to art. 775 of the CPC:

"The exehot has the right to give up all execution or only some executive measure. [4]"

The text gives the exequent the right to give up any action, part of it or any executive act.

It is important to highlight a question raised by Daniel Neves analyzed from the point of view of Theodoro Jr., Zavascki and the STJ in Resp 715.692/SC of Min. Castro Meira's report:

Giving up is not confused with renunciation, with an interest in material law. It means that the creditor simply gives up the right to charge his right at that time, in that specific process, and may, however, enter later with identical action, provided it proves the payment of the procedural costs of the first action (art. 486, §2°, CPC) [2].

Also, follow Daniel Neves:

The admissibility of the discontinuance of enforcement shall be subject to the failure to perform in proceedings acts which cannot be annulled without prejudice to the debtor or third party. In this way, a good collected in a judicial auction will not be admitted to giving up the execution; likewise, it will be inadmissible to give up if in the execution of the obligation has already been satisfied by third (art. 817 CPC) [2].

Moreover, the execution does not require agreement of the executed for this withdrawal. However, there is an exception when the debtor's challenge or embargoes are based on material law or merit.

In this way, the execution may even have the execution, but the embargoes will not be extinguished. Otherwise, if the debtor's embargoes refer to procedural issues, they will accompany the execution in its revocation. Finally, there is no barrier when the execution is not halted or contested.

2.7. Nulla Executio Sine Titulo

By this principle there can be no execution without an enforcement order, which will be judicial or extrajudicial.

The CPC has a taxable list that presents the judicial executive titles in art. 515, as well as the extra-judicial executive titles in art. 784. Thus, any case that evades what is explicit in the above articles cannot be executed. For this reason, it embraces the principle of the typicity of executive titles (nulla titulus sine lege).

Therefore, with the default of the debtor, the enforcement order is one of the requirements of enforcement, necessary for the creditor to legitimately demand the fulfillment of the obligation. Consequently, in addition to the debtor's voluntary failure to comply with the obligation, the executioner must present a title that substantiates his enforcement action or the phase of execution of the judgment.

However, although without an executive title there is no execution, with an executive title there may also be no execution. This is because, through art. 785 CPC, it is possible that the creditor, even in possession of executive title, choose to enter with knowledge action. This, in turn, brings to the debtor greater possibility of defense and less or late chance of consummation of constriction of his assets.

Enforcement titles shall be secured with certainty of the existence of credit and liquidity or quantification so that civil enforcement can have legally valid existence.

In addition to being a requirement for the exercise of the right of execution, the executive title has special importance in Brazilian civil procedural law because it is its starting point for defining what will be the enforceable procedure applicable to the case.

2.8. Principle of Creditor's Interest

By means of this principle, that the one who must initiate and proceed with the execution is only the creditor, with the apparatus of the Judicial Power. This means that, in the execution of a sentence that condemns the executed to the payment of certain amount, even in the case of maintenance, it is only up to the creditor to begin or proceed with the execution, only interested in the enforceable activity, under penalty of violating the principle of inertia and contradiction in the face of the veil of arms parity.

Therefore, in relation to the execution of a judgment to pay a certain amount, under penalty of violation of the principle of inertia and of the principle of one-sidedness of interest in the enforcement activity, the judge will not be able to begin the execution of a judgment of office and must await the initiative of its largest party: the creditor of the instrument permitting enforcement.

3. Attachment as a Consequence of Property Liability

Attachment is the executing act whereby the Judiciary subrogates itself in the property of the executed, in whole or in

part, making constriction in favor of the creditor to satisfy the obligation. Thus, in the words of Ferrari Neto:

Attachment is the act by which the Judiciary performs the constriction on the assets of the executed with a view to ensuring the execution of the amount to pay, following the direct or indirect satisfaction of the right to credit of the creditor [5].

As provided above, under the principle of liability and art. 789 of the CPC, "the debtor responds with all his present and future assets for the fulfillment of his obligations", except no attachment of assets. From the occurrence of the pledge, it is demarcated which will be the assets of the executed to be allocated to the fulfillment of the obligation and then, through it the creditor acquires preference over the asset pledged, in accordance with the art. 797 CPC, with observance of arts. 908 and 909 of the same legal acts, as regards the plurality of creditors.

In this tuning fork, it is worth highlighting the teachings of Ferrari Neto:

The Pledge, therefore, is one of the mechanisms of subrogation from which the Judge of the State, replacing the will of the Remove from the debtor the availability of the good and the payment under the protection of a depositary, with a view to satisfying the enforceable right [5].

Therefore, it is worth saying that the executed who had his property built by means of the pledge, did not lose the asset pawned. It only possesses the affected good, so that it cannot dispose of it, keeping the property.

As to its legal nature Michele Taruffo teach that:

As to its legal nature, one can pre-empt any understanding that the pledge would be a real right of guarantee, as set out above. The understanding that the pledge would have a precautionary nature should also be removed. It is certain that, through the pledge, the individuation, and the unavailability of the good of the executed occurs. This does not make pawning a precautionary act, for such an act is the first executive act [6].

In this way, it can be stated that the pledge has a legal nature of executive act, even if there is the possibility of having a precautionary nature to guarantee the judgment, as understood by Barbosa Moreira.

According to Francesco Carnelutti "the main function of the pledge lies in determining the good on which the expropriation will be carried out and fixing its subjection to the executive action'" [7].

The attachment has as its effect, in short, in the exhortation of Fabio Monnerat "a) the realization of property liability; b) the guarantee of execution; c) the establishment of the right of pre-emption; d) the loss of direct possession of the asset pledged; e) the ineffectiveness of the disposal of the assets pledged after the formalization of the pledge" [8].

The list of art. 835 brings the order of achievements to be followed for constrictions, having as the first the pledge of money also explicit in art. 854, all from CPC.

In this article will be approached, preferably, the online pledge SISBAJUD, consisting of the search of bank accounts and cash blocking, by court order, attachment of social quotas and earnings pledge of the company with its consequences.

3.1. The Online Pledge Through the Sisbajud System

Recently, in August 2020, the new online pawning system known as SISBAJUD - Asset Search System of the Judiciary - came into effect. In addition to the functions of BACENJUD - platform that connected the Judiciary to financial institutions, through the Central Bank of Brazil -, such as electronic sending of blocking orders and requests for basic registration and balance information, with the new system it is also possible to request detailed information from financial institutions on current account statements, copies of current and investment account opening agreements, credit card invoices, exchange agreements, copies of cheques, PIS/FGTS statements and, still both current account securities, as well as securities and fixed income securities and shares may be blocked. It is regulated by Resolution Conselho Nacional de Justiça (CNJ) n. 61 of October 7, 2008 and by Instruction of the STJ n. 6 of October 18, 2011.

SISBAJUD has also innovated with the application of the repetition of order constriction for a certain period until the blocking of the value necessary for its total compliance, reaching thirty (30) days and with chances of covering for the period of sixty (60) days.

It urges to highlight the possibility of registering a single bank account for the receipt of SISBAJUD blocking court orders, through art. 4th of Resolution 61/2008. After granting registration, this will be valid for all judicial organs. In the meantime, the natural or legal person requesting the registration is obliged to keep immediately available values in sufficient amount to attend any and future court orders, under penalty of redirecting to other accounts and financial institutions that have balances available, as regulated by art. 7th of the abovementioned Resolution.

In the event of insufficient balance in the registered single account, the requesting authority of the court order will communicate in five (5) days to the competent authority that, in turn, will open administrative procedure for hearing of the holder of the single account, also in five (5) days and after, in the same period, decide for the maintenance or cancellation of the registration. Regarding the contradictory, the interested party may submit defense within five (5) days demonstrating error of the financial institution maintaining the single account indicated or other relevant justifications.

If the account is canceled by the financial institution, after six (6) months, the holder can request its re-registration, indicating, inclusive, the same account, if you want. New recidivism in the breach of maintenance requirements sufficient resources for blockages will result in new deregistration, this time, for the period of one (1) year. Finally, the third debarking will have definitive character, all in the molds of art. 8° of the above Resolution.

This possibility brings an interesting aspect, considering that, at first, the order of constriction in all accounts, financial assets and other possibilities is avoided at once.

3.2. The Pledge of Social Quotas

This form of attachment is relevant in cases where the

executed does not have movable or immovable property, as well as insufficient bank balance to fulfill the obligation, but has a corporate stake in the company, as stated in Articles 861 of CPC c c/c 1026 of the Civil Code (CC).

Therefore, the non-performance of the pledge of social quotas of the third alien to the feat. Relative therefore, it is possible to grant the institute the disregard of the legal personality, in which they are not confused.

The company, on the other hand, can avoid its dissolution with the acquisition of social quotas pledged, without reducing its share capital and with the use of reserves, according to art. 861, §1° of the CPC. In its §5° it foresees the possibility of the judicial auction of the quotas if no partner exercises his right of preference or the liquidation is excessively onerous for the company.

However, the present modality generates controversies as to hurt the *affectio societatis* and the desire of the members to constitute a legal entity in not having unknown third party, as well as the contractual possibility of not being admitted or may be excluded from the company via the judicial system, depending on the individual case.

In the event of this type of pledge, only the property effects of the quotas, that is, the right of the member to the profits of the company and to participate in the total or partial dissolution of the company and the establishment of assets, are apprehended. However, personal rights such as voting at General Meetings or any other form of deliberation, which will remain exercised by the quota holder, are not allowed.

In accordance with Assis Gonçalves Neto:

The share, therefore, has the nature of an intangible good, that brings together personal and property rights. Personal rights are those of deliberating, overseeing, voting, and voting, withdrawing from, and possibly managing, society; property rights are to receive dividends when determined on balance and deliberately distributed, and to participate in the social acquis in the event of the total or partial dissolution of the company or the establishment of its assets as a result of death, exclusion or the exercise of the right of withdrawal. (...) There is the submission of society to a judicial commandment that obliges it to adopt a costly procedure, without any causal relationship that justifies it, because nothing owes to the creditor of its partner nor can be held responsible for an event that is not at all attributable to it [9].

On the impacts of this pledge, also talks Rômulo Bronzel:

The company, legal fiction that received its own personality in relation to the partners by the Federal Constitution, which should not be focused on the personal acts of these received a judicial attribute [10].

Moreover, regarding the burden that this attachment modality generates, highlights Alfredo Neto:

As it is not your debt, it seems to me that in the interpretation of such a rule the right to reimbursement must be implicit, ensuring the company the right to demand the anticipation of the expenses it will incur [11].

Another problem in the vision of Gonçalves Neto would be the possibility of challenging the evaluation of quotas, by creditor and/ or executed with the evaluation of quotas by society, which is a non-judicial act. However, with chances of filing lawsuits and even postpone the payment of the debt.

This highlights very sensitive problems that can lead to the dissolution of a company, considering the risk of breaking the corporate bond (*affectio societatis*), bringing incalculable losses to society.

3.3. The Pledge of the Company's Revenue Percentage

This is an exceptional measure and, therefore, for its compliance, whether it must meet the requirements described in the cap of art. 866 of the CPC.

The 1st brought the possibility of the pledge of percentage of the company's revenue. In this sense, periodic judicial deposits are made until the total amount determined in the judicial obligation is reached.

In the §2° it's possible to infer the appointment of administrator-depositary by the judge, who will have an obligation to submit his performance to the judgment through the payment plan to be approved, delivering the amounts received with the respective monthly balance sheets, in addition to providing monthly accounts.

It's important to note that the management of the company remains intact, and the depositary director is not responsible for this function. To this it is necessary to evaluate what percentage of the revenue, without harming the expenses and maintenance of the company, can satisfy the creditor, in the course of time. In this tuning fork, the principal duty of the administrator-depositary is to transfer a monthly amount, previously established and approved in court, to a judicial account, in accordance with art. 869, §5° CPC.

Another option adopted by the jurisprudence and often seen in the forensic practice is the letter sent to the debtors of the then executed, of knowledge and at the request of the creditor, The billing is retained in the percentage accepted by the court directly by the third party and deposited in court.

By this way of acting, there is no intermediary of the administrator-depositary, which can be very harmful to the executed time that the creditor can plead any percentage, even 100%, fitting the analysis and trial of the magistrate, often without the contradictory of the executed who will only become aware with the intimation of constriction, already effective.

It is worth noting that this form of attachment is found in item X of art. 835 CPC, which provides for the order of preference in the execution. Therefore, such modality cannot prevent the fulfillment of expenses and regular operation of the company, it is essential that the pledge of billing does not harm its survival.

Only the absence of other goods on which constriction may affect (cash, in kind or as a deposit or application at a financial institution; Union, State and Federal District debt securities quoted on the market, securities and securities quoted on the market; road vehicles; real estate; movable property general; vessels and aircraft and shares and quotas of single and business companies). Moreover, the execution must lead to the exhaustion of all efforts in trying to locate assets liable to attachment on behalf of the executed; or, even

if located, are difficult to dispose of. Even so, the form of attachment must be deferred with caution by the court, so as not to impede the continuity of the company and its activities.

The billing is fundamental for the company to obtain working capital, aiming at fulfilling its obligations. It is necessary to evaluate the payment capacity of the executed, in relation to the net revenue in cash and in future payment.

A major negative impact of this form of attachment, especially with letters sent directly to third parties outside the deed, or debtors of the executed, is the violation of the rule of legal preference of the receipt of credits. This because, depending on the percentage deferred by the magistrate or, in the case of the existence of other income pledges already existing in that company, seriously hurt the possibility of paying taxes, tax nature, as well as payment of employees, of a wage and food nature, in addition to the principle of preserving the enterprise and the social function of the enterprise.

It follows Tolentino Frigi:

(...) Only part of a company's income can be taken as its equity, committed to paying its liabilities, which are its debts. And only a very limited percentage of this equity resulting from the billing can be pledged, so as not to make the debtor's business activity impossible. The balance sheet of the debtor, with the financial statements, or even the monthly balance sheets with the income statement are the fundamental parts for the examination of the suitability of the pledge of percentage of revenue. These are mandatory and necessary accounting documents for the records of business activity and for tax purposes, required by the accounting rules and provisions of Articles 1,177 to 1,195 of the Civil Code of 2002, and Law 6,404 of 1976, known as the Law of S/ A. [...] The potential of future increases or reductions in net revenue, or invoicing of the executed debtor should also be weighed and considered when setting the percentage to be pledged. And the judge of the execution must be attentive to the fact that the fixed percentage does not "become final" and should be reviewed by provocation of the parties, always bearing in mind the principle of preservation of the company [12].

This logic stems from the concern about the continuity of economic exploitation, which should not be hampered by attachment, given the social function that companies perform.

Therefore, the trustee aims to prevent the ruin and the shutdown of the company, avoiding losses and protecting the collective interest to preserve as much as possible sources of production and trade, maintaining the regularity of the supply of these companies.

In this same reasoning Rogerio Tadeu Romano:

The pledge on bank balances undoubtedly represents a ruin for small businesses that only have limited resources in their current bank accounts to honor their urgent and preferential commitments to the tax authorities, employees and suppliers. (...) the reasonableness and moderation of expropriation measures must prevail in respect of Article 5, LXXVII, of the Federal Constitution. (...) A pledge of a company's earnings without regard to a middle and end relationship means a fallacy. A medium whose effects are undefined and an end whose contours are undetermined, if they do not prevent the use of proportionality, weakens, especially, the power of control over the acts of the Public Power [13].

Despite being the pledge of billing admitted by the Superior Courts, requires the fulfillment of some requirements, according to the unanimous jurisprudence of the Supreme Court. The earnings pledge of the company must not hurt the business activity. In the words of Petrelli Gastaldi "for its maintenance, the company needs to be fed and will only survive if it is properly nourished by the indispensable working capital. It is with him that he forms his stocks of raw materials and the cash of labor costs. [14]"

Unviable reveals the income pledge within the current assets of a company. Said accounts are an integral part of working capital, of which the entity cannot be private, without suffering deep shock in the flow of economic circulation that keeps it active. To achieve it at this vital point we must declare it to be immediately interruption. If you do not have your income, how will the company pay for the functioning of its activities? How will you fulfill the labor and tax commitments?

It is good to see that the stranglehold and the extinction of companies are not the goal of contemporary society nor, much less, the goal of the execution process, whose development, on the contrary, the law orders to subordinate the fundamental principle of the lowest possible cost to the executioner, as set out in art. 805 CPC.

As for the principle of company preservation and continuity of business activity well noted above by Fábio Ulhôa also manifests:

When the principle of the preservation of the company is based, what is in view is the protection of the economic activity, as an objective of law whose existence and development interest not only the entrepreneur, or the partners of the business company, but to a much larger set of subjects. (...) What is sought to preserve, in the application of the principle of preservation of the company, is, therefore, the activity, the enterprise.

The principle of company preservation recognizes that, around the regular operation and development of each company, not only the individual interests of entrepreneurs and entrepreneurs gravitate, but also the meta-individuals of workers, consumers, and other people; are the latter interests which must be considered and protected in the application of any rule of commercial law. (...) The principle of company preservation is legal, general, and implicit [15].

It is noteworthy, therefore, that the judge cannot make impracticable the exercise of business activity, because this is essential.

4. Case Study: Pledge of Business Billing

This chapter will analyze real Brazilian cases in which the company's revenue was pledged and its consequences for the activity.

The first case brings by means of enforcement action of extrajudicial title, the creditor promoting the execution of approximately R$280.000,00 debt (two hundred and eighty thousand reais). Frustrated the measures of online attachment constriction and Infojud, the creditor required the pledge of billing executed, listing possible creditors of the executed.

The magistrate, in turn, granted the request for the forfeiture of executed billing, setting initial level of 10% (ten percent) of the executed receipts to the detriment of the executed creditors, surviving a r. decision below:

(...) Regarding the blocking of claims, rightly the executed, because in a recent decision of the Court of Justice, in execution of the CSN in the face of the Vita Hospital, the attachment of credit from 30% to 10%, In the case in question the order is of pledge of all the amount to be received from the credit executed for services rendered, which, of course, means the death of the company, which has tax charges, labor and wages to pay, in addition to suppliers.

Execution must always be carried out in a less onerous manner than possible for the debtor. It is not my understanding, but a principle that guides any execution, as in the example mentioned above and finds prediction in art. 805 of the CPC.

The connection of demands is evident since the legal relationship discussed by the parties is the same both in execution and in monitoring. Become the 3rd Civil Court requesting the decline of competence and remittance of the cases n°0011023-12.2015.8.19.0066, with redistribution to this 4th Civil Court and attaching to these files. Become official and Become Intimate.

Court of Justice of Rio de Janeiro (TJRJ) 0010963-39.2015.8.19.0066 - Rio de Janeiro Volta Round 4th Civil Court, judge: Roberto Henrique dos Reis, Date: 24.11.2015.

In parallel, in the files of nº 0011023-12.2015.8.19.0066, the same creditor promotes monitory action in the face of the same executed, this time for the amount of R$ 49.955,06 (forty-nine thousand, nine hundred fifty-five reais and six cents). Passed sentence that constituted the title in judicial executive.

Started the fulfillment of judgment and not obtaining full success in the constrictive measures of online attachment and infojud, the creditor required the pledge of revenue of the company.

In this case, the executioner, in turn, connected with the case considering the pledge of revenue already granted in those case, and the executioner may not suffer with new constriction, under pain of offending to the principles of less burdensome execution and continuity of the company, which was admitted by the judge. Thus, the magistrate understood to keep the block 10% (ten percent) over the invoicing of the running, limiting 5% (five percent) in each auto.

In another case, the execution promoted enforcement action extrajudicial title in the amount of R$ 64.802,67 (sixty-four thousand, eight hundred and two reais and sixty-seven cents). Started the execution phase and requested attachment of the company's revenue, the magistrate granted the attachment to the level of 5% (five percent), as decided below:

Page 59/60 - The execution cannot be so costly as to render the executed company impossible or unbearable to the executed one. In a recent decision, in a lawsuit in which CSN and Hospital Vita contend, the E. Court of Justice held that the pledge on credits of health plans and other contracted clinics and hospitals should be limited to 5% of the amount to be received monthly, until the total amount of the debit is reached, as it is a measure that is less onerous to the debtor and which has the capacity to satisfy the claim executed, a decision to which I join.

Thus, after having collected the costs, the companies pointed out are officiated. 59/60, to deposit in favor of the court the equivalent of 5% (five) percent of the claims of the executed, until the execution is satisfied, at which time they will be officiated to cease the discounts and transfers.

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However, not always the magistrate weighs the limit of the execution, as in the case described below in which remained deferred pledge of the company's earnings without fixing any percentage. Thus, it remained necessary to appeal to the Court of Justice, through Instrument Injury, demonstrating to the judges the gravity of the grant without fixed percentage, and may, inclusive, occur in its entirety.

Also, it remained highlighted the situation of fragility of the executed before the existence of other pledges of the same nature in their billing, the consequences of the COVID-19 pandemic, and several other assumed obligations with the government and labor responsibility.

In this way, suspensive effect was required for any determination of credit lock to be limited to 5% (five percent) of the credit, and not up to the limit of the debit, which was met:

(...) This is the origin of monitory action in the execution phase, in which there was the on line attachment determination of the execution value, which remained fruitless, being determined the blocking of the values that are passed on to aggravating by health insurance operators. The jurisprudence of the Supreme Court has established that the pledge on monthly invoicing must be set in percentage that does not make their activities unfeasible. Thus, in relation to summary cognition, I verify that the maintenance of the blocking of the totality of the values to be received by the aggravating one can hinder its activities, being reasonable the fixing of the percentage of 5% on its monthly billing. For these reasons, I demand THE REQUEST FOR SUSPENSIVE EFFECT, to fix in 5% (five percent) the percentage to be blocked in the funds that are transferred by health plans.

Thus, it is denoted that the jurisprudence has been applying by the minimum percentage, so that it does not hinder the business activity, as it should actually occur.

5. Conclusion

The subjects addressed in this study had for object the

reflection on the executive phase, its principles and as consequence the effectiveness of the law, in the measure in that its application allows to satiate the yearnings of the creditor, without that it promotes a real' hunt to the detriment of the executed, but aiming to achieve the receipt of its credit, based on the principle of the creditor's interest; in so far as it grants reasonableness and proportionality to the executed, supported by the principles of the contradictory, social function of the company, less onerous, among others.

The study aimed at some principles contained in the law, which are interwoven with constitutional principles and the extreme relevance of their meanings as essential instruments to benefit the relations between creditor and executed, as well as for both interests to be served and respected.

The bibliographic research provided to address the real effects for the implementation of the attachment modalities questioned within the Judiciary Branch in search of the solution of conflicts of the repressed executive demands, so that they are not frustrated and do not reach, in excess, the property of the executed.

Thus, it is observed that, although subjective, its equilibrium is intrinsic to the executive phase itself, with the purpose that it does not support the executed with burden beyond the necessary, being violated principles and normative merely by its position in the passive pole of the work.

Therefore, it is essential that rules are respected and applied consistently, with the intention of balancing the executive phase, also respecting the macro context that is, as the reality of the executed.

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