

APPLICATION OF A CLAIM OVER PROPERTY

When opening the procedure, some goods owned by the debtor may appear not to be his/her own property. Real assets owners can claim their property through a specific procedure.

Chattel owners can claim their goods. Formal and time conditions must be respected; otherwise the goods will become the company's property.

Exception: The owner of a good is exempted to act if the contract on the good has been published (contract of lease back, sale with a retention clause, contract of rent...). He/she can then apply to the administrator if one has been appointed or to the debtor to get his/her property back.

Legal basis: Art L 624-9 to L 624-18 of the commercial code, articles 67, 114 to 117 of decree n° 2005-1677 of December 28th 2005.

Conditions

Both material and immaterial goods can be claimed (chattels, tools, businesses...).

The applicants for claims' purpose is to be acknowledged a right over property, whereas the applicants for restitution's purpose is to get the property back or the sum amounting to the property. The claims must be submitted to the judicial agent by means of a registered letter with return receipt.

The creditor only has a claim if the agent permanently rejects the restitution or, if the agent has not answered within one month.

The creditor must then submit his/her claim to the supervisory judge by means of an application to the Registry ("le greffe") within one month starting from the end of the time period allotted for the agent to give an answer.

The good must exist on the day of the opening of the procedure, that's why it is useful to draw up a list. If the good has been lost or sold, the good is converted into a market value, corresponding to the value or the price of the good. Thus, creating a debt that will be settled through the procedure.

Conditions for the claim's admissibility:

The good must exist in kind, and its restitution must be possible without any damages. A right recognised on fungible goods gives the right on similar goods, for the same value.

N.B: If the application for a claim has not been granted within one month from its submission, the applicant must seize the supervisory judge, within one month pursuant the end of the time period for answering.

How to file the application?

One must provide:

5 copies of the claim with the application for a claim or the restitution of the good, and 2 copies of the

documentary evidence.

The documents accounting for the dismissal or the absence of answer from the agent, id est, in the second situation, a copy of the registered letter with return receipt of the application submitted to the agent.

Documents accounting for the right of property regarding the good unless the contract has been published.

The signed claim must be submitted to the sole counter of the Registry (“le greffe”) (office n°11) directly or by mail.

Procedure:

The registrar (“le greffier”) registers the claim. Once the money deposit has been made, an answer is given within 1 to 4 months, including the application for observation, transferred by the registrar to the agent. The creditors’ representative or the liquidator has three weeks to make observations on the application. He/she may decide that the application has no merits or he/she may not answer at all. In any case, the registrar transfers the application to the supervisory judge.

The supervisory judge may consider that he/she has enough information and issues an order, or he/she can decide to hear the parties during a hearing. The order leads to the restitution or the acknowledgment of the right of property by rights. The pursuance of the contract during the observation period amounts to the acknowledgment of the right of the creditor applying for a claim or restitution. The order is then submitted to the Registry. The registrar gives a notice concerning the order to the applicant and to the agents.

Time limit:

The applications for a claim must be submitted to an agent by means of a registered letter with return receipt within two months pursuant the publication of the opening judgment in the BODACC. This time period starts from the termination or from the end of term of the contract, for the goods that are subject to a contract at the day of commencement of the procedure.

This period is extended for 2 additional months if the creditor lives abroad. The application for a claim is not subject to a set period of time and can be submitted at any time during collective proceedings.

Appeal:

The orders issued by the supervisory judge may be appealed before the court within ten days pursuant the notification of the order by means of a declaration to the Registry or a registered letter with return receipt.