

Assignment of receivable in breach of the anti-assignment clause

Abstract

The goal of this rigorous thesis entitled “Assignment of receivable in breach of the anti-assignment clause” is to answer several key questions relating to the effects and consequences of breaching the anti-assignment clause under the current Czech law. In particular, it is examining the effects of the agreed anti-assignment clause under the current Czech law, i.e. whether it has *erga omnes* or merely *inter partes* effects. Furthermore, it is analyzing the consequences of breaching the anti-assignment clause under the current Czech law and whether the current Czech law allows differentiation of the consequences according to the circumstances of the case. This rigorous thesis seeks to answer all these controversial questions. In search for the answers, this work deals with a number of opinions already expressed in professional circles, as well as with some foreign theories.

The first chapter is devoted to a historical analysis of the development of understanding of the receivable and its transferability, with an emphasis on Roman law. First, the nature of the receivable and the possibility of disposition with a receivable from Roman law to modern private-law codification are examined. This is particularly important for dealing with theories that sought the answer to the effects of anti-assignment clause in the nature of the receivables. Subsequently, to understand the tradition of the anti-assignment clause in the Czech Republic, an analysis of the development of the anti-assignment clause from the General Civil Code to the present is approached.

In the following chapters, the author deals with the interpretation of Section 1881 (1) of the Civil Code regulating anti-assignment clause in Czech conditions. The author deals in detail with individual opinions already expressed in the Czech legal environment. In particular, the second chapter analyses whether the anti-assignment clause has *erga omnes* or merely *inter partes* effect. The third chapter deals with theories of non-transferability of receivables as its nature held in Germany (BGB) and Austria (ABGB). The fifth chapter focuses on the objectively teleological interpretation of Section 1881 (1) of the Civil Code in order to determine which of the linguistically possible theories should prevail in the current Czech law. In the sixth chapter, the author supplements his analysis of Section 1881 (1) of the Civil Code with considerations that include *de lege ferenda*.

Key words

Receivable, assignment of receivable, anti-assignment clause, *erga omnes* effect of a contract, invalidity of the assignment agreement, ineffectiveness of the assignment of receivable