

Original Paper

The Relationship between Purchase Money Security Interest and Title Retention

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Abstract

The introduction of Purchase Money Security Interest (PMSI) to our country has expanded China's system of security interests. The structures of title retention and financial lease created based on parties' consensus are blurred by the function of security, deviating from the legal property rights, ignoring the true legal meaning of parties, and resulting in the effectiveness equivalent to security interests. Although title retention, financial leasing and PMSI all have the functional value of guaranteeing price claims, and Article 388 of the Civil Code has enriched the content of guarantee contracts by introducing the registration opposition rule into atypical guarantees, we should still adhere to the system logic of the dichotomy between property and debt in the Civil Code, and draw a clear line between the two under the principle of legal property rights. The influence of guarantee functionalism should be limited to expanding the scope of "other contracts with guarantee functions" in Article 388 of the Civil Code. The retention of ownership and financial lease in Article 57 of the Judicial Interpretation on the Guarantee System are actually linked to PMSI after being attached with various conditions, which is fundamentally different from the original system structure of Articles 641 and 735 of the Civil Code.

Keywords

Purchase Money Security Interest, Title Retention, Security Interest, Recall Right

1. Introduction

For implicit guarantees, if both parties establish rights with a guarantee nature through their expression of intention, the guarantee right must be publicly disclosed in a way that can be verified by a third party, because regardless of whether a guarantee is established or not, the debtor must use all of its responsible property to guarantee the realization of the creditor's rights. Therefore, the establishment of

guarantees is not to resolve conflicts between creditors and debtors, but to coordinate the priority of debt repayment among multiple creditors. The security right is a right that has priority effect on third parties, so the introduction of the registration adversarial rule in China's Civil Code is considered to be the functionalization of ownership retention and ownership retention in financial leasing as security interests. The Uniform Commercial Code of the United States covers various forms of transactions with security functions using a very broad concept of movable property security rights. Except for the consumer sector, the enjoyment of security rights requires the completion of registration, possession, control, and other publicity as necessary conditions. Therefore, the Uniform Commercial Code of the United States avoids the occurrence of implicit guarantees in legal structures with different rights and obligations agreed upon by the parties (Dong, 2007). Introducing registration adversarial rules into implicit guarantees and making them visible is considered the first step in reforming the chattel and rights guarantee system.

Ownership retention, financial leasing, and transfer guarantee, as atypical guarantees, are all secured by the ownership of the subject matter to realize the creditor's rights. However, compared with ownership retention and financial leasing, the creditor who enjoys ownership in transfer guarantee can only obtain priority compensation for the value of the subject matter as a means of securing the creditor's rights. Because ownership is only manifested as a one-sided value right, other rights of ownership are not reflected in transfer guarantee, and ownership is completely reduced to a security interest. Therefore, this article will not discuss the transfer guarantee method of ownership guarantee, and will focus on ownership retention and financial leasing. The retention of ownership and ownership in financial leasing not only serve as a guarantee, but also maintain the special effect of ownership, which is significantly different from the transaction structure of security interests. Ownership retention and financial leasing have not completely abandoned the attribution effect of ownership retention. For example, the Civil Code allows for the transfer of collateral, but in a retention of ownership sale, the buyer cannot dispose of the subject matter at will. However, in some aspects, the Civil Code has transplanted the realization effect of security interests to this type of transaction structure, which has led to a lack of consensus on the status of the owner in the context of the Civil Code. Both ownership retention and financial leasing use their ownership to guarantee the realization of value claims, so there is no substantial difference between the two. The draft European Model Civil Code even directly includes financial leasing in ownership retention, and financial leasing is considered a special form of ownership retention. The following text will directly discuss the retention of ownership as an example.

For financing guarantee transactions related to the purchase of goods, the retention of ownership and the retention of ownership by the seller and lessor in the form of financial leasing transactions are endowed with the function of value guarantee. Therefore, from the perspective of functionalism, whether it is the mortgage right of the purchase price debt, or the retention of ownership and financial leasing, they are all specific transaction forms under the purchase financing guarantee transaction. In the context of China's civil law, Article 57 of the Judicial Interpretation of the Supreme People's Court

on the Application of the Civil Code of the People's Republic of China on the Guarantee System (hereinafter referred to as the "Judicial Interpretation of the Guarantee System") expands the super priority effect of the mortgage right of the price creditor's right to apply to the retention of ownership and financial leasing, which is considered to be the embodiment of the functionalist legislative method of security rights in China's civil law (Ji, 2021).

The introduction of the mortgage right of price creditor's rights has expanded the types of security rights, but the super priority effectiveness rule of the mortgage right of price creditor's rights has been extended to apply to ownership retention and financial leasing with similar functional value. The interweaving of atypical guarantees and the logic of property rights in China has triggered internal normative conflicts in the purchase guarantee financing system (Sun, 2018). What should the atypical guarantee methods of ownership retention and financial leasing go from after the introduction of the mortgage right of price debt into the Civil Code? Some scholars believe that the mortgage right of price debt will compress the applicability space of ownership retention and financial leasing. As a form of guarantee that operates outside the system of security interests, the elimination of atypical guarantees became a guiding principle for the reconstruction of China's guarantee system during the compilation of the Civil Code (Zou, 2022). Therefore, some scholars believe that incorporating non typical guarantee methods such as retention of ownership and financial leasing into the system of security interests has become the theoretical basis and implementation bridge for the creation of price based debt mortgage rights (Luo, 2023). Does the inheritance of the mortgage right of the price creditor result in a blockade of the applicable space for ownership retention and financial leasing, or does it provide diversified transaction forms for the price creditor in parallel? Based on the norms of the Civil Code itself, the retention of ownership and financial leasing have not disappeared due to the establishment of the mortgage right of the price claim. How to properly connect the mortgage right of the price claim as a security right with atypical guarantee methods? What new interpretations should be made for the controversial nature of ownership retention and financial leasing in civil law theory after the promulgation of the Civil Code, which should be adapted to the mortgage rights of price claims? The issue of which one takes priority in the competition between the two urgently needs to be resolved.

2. The Super Guarantee Effect of the Mortgage Right of the Price Debt on the Price Debt

According to Article 416 of the Civil Code, the registration of mortgage within 10 days after the delivery of movable property is a necessary condition for the establishment of the mortgage right of the price creditor's right. The delivery time point, as the starting point of the grace period, is extremely crucial for the establishment of the mortgage right of the price debt. Due to the complexity of transaction forms in practice, the concepts of simple delivery, possession modification, and instruction delivery are widely used. For price providers other than credit sellers, as well as third parties who wish to establish a general mortgage on movable property, determining the delivery time is not an easy task. For example, if the buyer occupies or uses the subject matter in advance based on a trial sale contract or

a lease and purchase contract, a third party may dispel doubts about the subsequent establishment of a price claim mortgage on the subject matter based on the appearance of the guarantor occupying the subject matter for a long period of time. Subsequently, the price claim mortgage registered within 10 days after the delivery date that is generally unknown to the mortgagee will have priority effect against it, causing damage to its rights and interests. This risk can be said to be difficult to prevent. In addition, when the delivery method is changed or instructed to be delivered, if the buyer has not obtained possession of the subject matter within a certain period of time after delivery, the lender who provides the price may miss the 10 day grace period and become a general mortgagee, losing the super priority effect of the mortgage right of the price creditor due to difficulty in knowing the transaction status between the seller and the buyer. Therefore, the provisions of Article 416 of the Civil Code regarding the grace period for the mortgage right of the price creditor's right need further refinement in judicial interpretation.

Article 416 of China's Civil Code is a successor to Articles 9-103 of the Uniform Commercial Code of the United States. Due to the effectiveness of the subsequent property clause, the floating secured party has a monopoly position in future property with priority over the subsequent secured party for repayment. The emergence of the mortgage right of the price claim is precisely to break the advantage monopoly of the previous floating secured party (Wang, 2021). Encourage the expansion of social financing scale, optimize resource allocation, and thereby increase the overall social benefits. For example, Company A was established with the project loan support provided by Bank B, and therefore pledged all of its future assets to Bank B. Now, Company A intends to purchase equipment worth 1 million yuan from Company C. Bank D has provided Company A with a purchase loan of 1 million yuan and established a mortgage right for the purchase price on the equipment. In this case, the establishment of the mortgage right on the price debt is self-evident for the benefits generated by A, C, and D, but B's priority position in the new collateral has been shaken as a result, seemingly suffering losses. In fact, thanks to the increase in collateral, B's interests have also increased or at least not been damaged, because the purchase of equipment was made possible by the loan provided by D, and D's exercise of the mortgage right on the price does not affect B's inherent interests. Therefore, the mortgage right of the price debt can be regarded as a Pareto improvement for all parties involved as a whole.

2.1 Scope of Application

According to Article 416 of the Civil Code, the mortgage right of the price creditor's right not only has priority over the prior floating mortgage right, but can also counteract the previously established fixed mortgage. But this will undoubtedly damage the trust interests of the prior fixed mortgagee, and the existence of this transaction risk will also impose an obligation on the general mortgagee who does not provide the price to review, that is, to review the date on which the guarantor obtained possession of the movable property; It will also increase the risk of fraud for general mortgagees, as mentioned earlier, the delivery date of movable property is difficult for anyone other than the seller and buyer to discern.

If the guarantor intentionally conceals or informs false information about the source of the movable property and the date of delivery of the movable property, the general mortgagee may file a lawsuit for infringement on the grounds of fraud. The issue of priority in this situation is a matter of balancing the interests of the general mortgagee's reliance and the price creditor's price claim, which should be protected first. Discussing the rationality of a certain system based on value judgments inevitably leads to the saying 'opinions vary from person to person'. There are three fates: one is infinite recursion, to the point where no basis for discussion can be established; The second is to conduct circular argumentation between mutually supportive arguments; The third is to decisively terminate the discussion process at a subjective choice point. The solution to the problem ultimately requires a discussion based on rationality and logic. Some scholars argue that the mortgage right of price debt can only counteract the previously established floating mortgage right, and cannot be extended to apply to fixed mortgages. The reason is that in comparative law, the legitimacy of the existence of the mortgage right of the price creditor's right is based on balancing the previously established floating mortgage right, and extending it to fixed mortgages lacks legitimacy and will deviate from the general priority rule of security rights established in Article 414 of the Civil Code (Zou, 2021). This article advocates that starting from the meaning of Article 416 of the Civil Code, the fixed mortgage right cannot be excluded from the super priority effect of the mortgage right of the price debt. The reason is that:

Firstly, the existence of collateral is the basis for the establishment of general mortgage rights. If financing is not provided for the acquisition of collateral, a sales contract will not be concluded. The provision of price increases the debtor's liability property and also improves the debtor's production efficiency. Therefore, the legitimacy of the priority of payment for the price claim over the general mortgagee, and the inconvenience caused by the ten day waiting period cannot be compared to the benefits brought by the mortgage of the price claim (Zhang, 2021).

Secondly, when the scope of application of the mortgage right of the price creditor's right is limited to the floating mortgage, the scope of the subject matter of the mortgage right of the price creditor's right is restricted due to the scope of movable property pointed to by the floating mortgage (Article 396 of the Civil Code), that is, the scope of application of the mortgage right of the price creditor's right will be limited to the types of movable property under the floating mortgage regulations. In addition, the scope of the subject of the floating mortgage is also subject to legal constraints, so the scope of the mortgagor of the price claim will also be limited to this (Zhang, 2021). Therefore, starting from the semantics of legislative norms, it is more reasonable to recognize that the mortgage right of the price debt has priority over the previously established floating mortgage and fixed mortgage. However, this also imposes an obligation on third parties who establish fixed mortgages on movable property to review the source of movable property.

2.2 Competition for Multiple Payment Rights and Mortgage Rights

When there is a question of which one of the two mortgage rights of the price creditor's right has priority on an object, the priority rule of Article 414 of the Civil Code regarding the competition of

multiple mortgage rights should naturally apply. The parties providing the price of movable property can be divided into two categories: one is the seller who allows the buyer to purchase on credit, and the other is the lender who provides the price of the goods to the seller. In this case, although they are both mortgage rights of the price claim, countries such as the United Kingdom and the United States sympathize with the seller more. In the field of real estate, the seller giving up specific real estate in real estate sales is far more worthy of legal preferential treatment than the money lender giving up money. The Civil Code of our country does not distinguish the types of subjects for setting up the mortgage right of the price creditor's right, and applies the general rule of competing mortgage rights, which determines the priority order after registration.

2.3 Priority Order of Price, Creditor's Rights, Mortgage Rights, and Construction Project Price

Regarding the relationship between the mortgage right of the price claim and the priority right of repayment of the construction project price, some scholars believe that if the mortgage right of the price claim is set on the building materials, the mortgage right of the price claim should have priority over the priority right of repayment of the construction project price. The reason is that the provision of building materials is a prerequisite for the contractor's construction. Although the labor wages of workers in the construction field are worth ensuring, the labor provided by the contractor will not increase the value of the building materials. Based on the measurement of value, the mortgage right of the price debt should have priority over the priority right of repayment of the construction project price (Zou, 2022). However, this article argues that there is no issue of competition between the priority right to payment of construction project prices and the mortgage right of price claims, because the mortgage right of price claims targets movable property. When the mortgage right of price claims is set on building materials, as the building materials become part of the building, the original ownership of the building materials is extinguished due to attachment, and the mortgage right of price claims existing on the building materials is also extinguished.

The Civil Code of our country adopts a legislative model for the guarantee of price claims, which combines the mortgage right of price claims with ownership retention and financial leasing. The nature of ownership retention and financial leasing in terms of ownership has been highly controversial in academia. The recognition of this issue is crucial for resolving conflicts in the application of two highly similar systems. The guarantee property system under the principle of statutory property rights cannot meet the increasing financing and guarantee needs of civil subjects, especially small and medium-sized enterprises. In practice, a large number of new guarantee methods created by parties through contracts have emerged, which have been absorbed into the contract section of our Civil Code. Due to the lack of public disclosure of guarantee interests, they are called atypical guarantees, also known as implicit guarantees (Zou, 2022). When compiling the Civil Code, China will improve the system of security interests and eliminate atypical guarantees as a guide for the reconstruction of the security interest system. As an atypical form of security that has long existed in practice, there are two feasible ways to eliminate ownership retention and financial leasing. One way is to stipulate a new type of security right

with the same function in the property rights code, thereby negating the value of ownership retention and financial leasing, and completely replacing them with this new type of security right; Another approach is to achieve the connection between non typical guarantee methods of ownership retention and financial leasing and security interests through judicial interpretation, granting ownership retention and financial leasing security benefits. What are the differences between ownership retention and financial leasing as atypical forms of guarantee and the function of security interests? Once the retention of ownership and financial leasing are endowed with security functions, it is difficult to avoid the stacking and competition between them and the mortgage rights of price claims. How to deal with the competition between the retention of ownership, financial leasing, and the mortgage rights of price claims?

3. The Dispute over the Nature of the Right to Retain Ownership

There are two different perspectives on the interpretation of the retention of ownership system in civil law theory, namely the theory of ownership composition (formalistic guarantee view) and the theory of security right formation (substantive guarantee view). Under the theory of ownership composition, the seller who retains ownership has true ownership of the subject matter (Gao, 2022). In the sale of movable property, the seller can either establish a security interest on the subject matter to guarantee the realization of its price claim, or retain ownership to guarantee the realization of its price claim. That is, the seller transfers the possession, use, and benefits of the subject matter to the buyer while retaining ownership.

Security interests are other property rights established on the property or rights of the debtor or a third party to secure the priority of repayment of the creditor's rights. According to Articles 641 to 643 of the Civil Code, the ownership of the subject matter retained by the seller does not reflect the priority of repayment of the security interests. From the perspective of normative semantics, the retention of ownership system should be understood based on the theory of ownership composition.

There are two possible paths for the parties to agree to use ownership as collateral to realize the creditor's rights. The first way is to use the ownership of ownership as collateral to realize the creditor's rights. For example, in the process of transferring the ownership of the subject matter from the seller to the buyer, if the buyer is unable to pay the price of the subject matter, the seller will return to the true owner of the subject matter; The second method is to use the value of the subject matter that the creditor has ownership of to obtain priority compensation. For example, after the debtor transfers ownership of the subject matter to the creditor, when the creditor's claim cannot be realized, the creditor can receive priority compensation for the change in price of the subject matter. Therefore, the norm of ownership retention has not abandoned emphasizing the attribution of ownership, but directly shifted towards the value attribute.

The theory of formation of security rights, also known as guarantee functionalism, holds that the ownership retained by the seller is actually a security right. Regardless of ownership, it is considered

that the seller has established a security right in the subject matter of the sale, and the agreement on retention of ownership between the seller and the buyer is only one way for the seller to obtain priority compensation for the subject matter.

The international movable property guarantee field is influenced by the functionalist guarantee concept, which includes atypical guarantees in the overall framework of guarantees and adjusts them with unified guarantee norms. In the process of reforming the system of secured transactions in movable property, countries have different attitudes towards how to position atypical guarantees. The first approach is to adhere to the distinction between typical and atypical guarantees within the existing institutional framework, rather than adopting the concept of unified security rights, represented by the United Kingdom and Belgium; The second approach is to implement the functionalist guarantee concept, where a unified movable property security right includes atypical guarantees and does not value specific agreements between the parties. As long as it has the function of guaranteeing the realization of creditor's rights, it is considered as a guarantee contract between the parties. Non possessive movable property security rights are established, represented by the United States, Australia, Japan.

Some scholars believe that the ownership retention system in China's Civil Code is actually a construction of security rights (Wang, 2021). The main reason is based on: firstly, Article 641 (2) of the Civil Code introduces the registration adversarial rule; Secondly, Article 642 (2) has achieved the grafting of the ownership retention system and the implementation procedure of the guarantee property rights in the Civil Procedure Law; Thirdly, according to Article 643 of the Civil Code, the seller shall settle the return after reselling. The retention of ownership is legally or functionally defined as a security right enjoyed by the seller, which is the content of the theory of security right formation. In "Chattel Security Transactions Law", there is a special chapter that stipulates conditional sales, attempting to integrate the retention of ownership into the chattel security system and adopt the same structure as the chattel security right. However, such attempts have not been successful, as the retention of ownership has not been able to break free from its own institutional structure and integrate into the security interest system in a new structural form. In theory, retention of ownership is known as atypical security, and scholars often connect the retention of ownership system with the security interest system by assuming that the ownership agreed upon by the seller is not the true ownership in the sense of ownership (Ji, 2022). At the beginning, scholars often used the relaxation of the legalism of property rights to endow the retention of ownership system with a security function, which is not strictly limited by the type and content of the security right, nor is it restricted by the transaction form between the parties. As long as the seller aims to obtain priority compensation based on the exchange value of the subject matter, they can disregard the seller's nominal rights and focus on their substantive security rights. Nowadays, the relaxation of the legalism of property rights can be better replaced by the formation of security rights (Gao, 2020).

The system of retention of ownership was first introduced in Article 134 of the Contract Law, and the

Civil Code has made more detailed provisions on this basis, grafting the registration adversarial rule and the procedure for realizing security interests onto the retention of ownership. Therefore, some scholars believe that China's retention of ownership system has gradually shifted from the initial theory of ownership composition to the theory of security right formation. Most scholars classify ownership retention and financial leasing as "other contracts with security functions" under Article 388 of the Civil Code. Compared with security interests, the retention of ownership by the seller provides the seller with the right to regain possession of the subject matter in the event that the debtor fails to fulfill the payment obligation or other conditions are met; On the other hand, in the event of the buyer's bankruptcy, it can be separated from the buyer's liability property. Therefore, in the realization of the seller's right to recover the price, the retention of ownership system is more extensive compared to the security interest that only functions through the exchange value attribute of the subject matter. Therefore, the agreement on ownership retention reached by the parties based on private law autonomy is difficult to rigidly classify into the system of security interests, and the construction of the ownership retention system is difficult to reconstruct into movable property secured transactions.

Whether the ownership retention system in China's Civil Code adopts the theory of ownership composition or the theory of security right formation, if the seller and the buyer agree to retain ownership, and the seller can only enjoy a security interest and obtain priority compensation rights on the subject matter of the sale, it indicates that the Civil Code has "functionalized" atypical security as a security right, that is, the agreement on ownership retention has the legal effect of establishing a security right, rather than the result of interpretation or inference. The viewpoint of this article is that the ownership retention system in the Civil Code should still be interpreted and applied based on the theory of ownership composition. The main reason is based on:

Firstly, starting from the introduction of registration adversarial rules that have caused controversy, the United Nations' "Legislative Guide on Secured Transactions in Movable Property" points out that non typical guarantees such as retention of ownership and financial leasing can be unified with or separated from movable property security interests. Regardless of the legislative model adopted, both ownership retention and financial leasing should introduce a registration and disclosure system to make hidden transactions between the parties explicit.

The registration provided for in Article 641 (2) of the Civil Code shall refer to the registration of ownership retained by the seller rather than the registration of security interests. According to the provisions of the Civil Code, the ownership of movable property does not need to be registered, and possession is used as a means of publicity. Therefore, some scholars believe that the seller's ownership does not need to be registered, and the introduction of the registration adversarial rule in the ownership retention system is a mapping of Article 403 of the Civil Code, which means that the nature of ownership has been functionalized (Xie, 2020). However, this article does not support the view that, firstly, in addition to the registration required for the establishment of chattel security interests, there are also registration elements for changes in chattel ownership, and those that have not been registered

shall not be able to resist bona fide third parties. In a retention of ownership sale, the ownership of the subject matter remains in the hands of the seller and has not been transferred. After the seller delivers the movable property to the buyer for possession, if the seller transfers the ownership, use, and benefits of the subject matter to the buyer, resulting in a lack of credibility in its ownership, in order to maintain transaction security, the ownership retained by the seller should be compensated for by a more credible registration and publicity system to mitigate the risks of movable property transactions due to the lack of possession (Ji, 2022). Therefore, the introduction of registration adversarial rules is more about providing endorsement for the credibility of the seller's retention of ownership; Secondly, in terms of registration content, the reason for registering non secured property rights is that the agreement on retention of ownership between the parties cannot derive the meaning of priority repayment of the secured price debt. The retention of ownership holder, when entering into a contract, may seek remedies for breach of contract; I also want to claim the right of claim on the subject matter through my identity as the owner, but there is no intention to establish a security right on the subject matter. Based on the principle of private law autonomy, the content of the contract should respect the true legal effect between the parties, which is the basic spirit of contract law. Following the interpretation of the Uniform Commercial Code of the United States, retention of title transactions include sales contracts and mortgage contracts. Even if there is no agreement between the parties to establish a security interest, the security interest is created based on the intended purpose and actual effect. This functionalist guarantee view is bound to be considered a departure from the fundamental spirit of contract law.

Secondly, according to Article 388 of the Civil Code, the establishment of a security interest requires the conclusion of a security contract as a prerequisite. Article 400 of the Civil Code specifies the content of a mortgage contract, and Article 403 specifies the time for the establishment of a mortgage right. According to the above, the agreement on retention of ownership reached between the seller and the buyer cannot be regarded as a mortgage contract, let alone the establishment of movable property mortgage rights (Zou, 2022). This article believes that the guarantee contract in Article 57 of the Judicial Interpretation of the Guarantee System should be distinguished from the ownership retention contract and financial leasing contract stipulated in the Contract Section of the Civil Code. The guarantee contract can exist as a subsidiary contract independent of the main contract, or as a guarantee clause in the main contract. The ownership retention contract is a conditional sales contract, and the agreement on ownership retention is only a condition attached to the transfer of ownership, not a guarantee contract.

Thirdly, according to Article 26 (1) of the Interpretation of the Sales Contract, when the buyer has paid 75% of the price, the seller does not have the right to retrieve it. This article argues that the provisions of Article 642 (2) of the Civil Code are built on top of the first paragraph. Only when the seller has the right to retrieve the property, can they choose the implementation procedure of the security interest as the second right relief path when negotiations with the buyer fail. The buyer's payment of the vast

majority of the price constitutes a limitation on the seller's right to retrieve (Liu, 2020). This is clearly not in line with the understanding under the functionalist guarantee view, because according to the indivisibility of security interests, regardless of the amount owed by the buyer, the seller has the right to priority compensation for the entire collateral.

Fourthly, some scholars believe that Article 642 of the Civil Code provides two remedies for the seller: the right of retrieval and the procedure for realizing security interests. When the buyer fails to pay the full price, both have the effect that the buyer ultimately enjoys the appreciation benefits of the subject matter and bears the depreciation losses of the subject matter. Subsequent resale by the seller after retrieving the subject matter is based on the termination of the sales contract between the two parties. After the termination of the sales contract, the seller, as the owner of the subject matter, has the obligation to deduct the unpaid price and return the remaining value, as in the procedure for realizing security interests. Therefore, it is believed that the true owner of the item indexed in the transaction structure is the buyer; In addition, the exercise of the seller's right of retrieval is subject to obtaining the buyer's consent. If the buyer does not agree, the seller can only request to auction or sell the subject matter in accordance with the relevant provisions of the Civil Procedure Law for realizing security interest cases. Therefore, it can be concluded that the actual position of the seller who retains ownership is equivalent to that of the secured party (Zhang, 2023). This article does not agree with the above viewpoint, mainly based on the following reasons:

Firstly, the reason why the exercise of the seller's right to retrieve the property requires the consent of the buyer is partly due to the exclusion of private remedies for ownership in civil law; On the other hand, once the subject matter falls into the hands of the seller, the buyer will be in a disadvantaged position. The seller can transfer the subject matter and obtain a certain price, which may be high or low, and it is difficult to determine whether it is reasonable. There is also a possibility of malicious collusion between the seller and a third party to damage the buyer's remaining interests and return rights. Secondly, as a unique remedy for retention of ownership, the right of retrieval, in terms of the retrieval mechanism in retention of ownership, initially the buyer's possession of the subject matter is either entitled or directly possessed. When the buyer fails to fulfill the obligation to pay the price or other legal reasons occur, the seller has the right of retrieval. At this time, the buyer's possession is considered as unauthorized possession, and the right of retrieval is essentially the seller's right to claim possession based on Article 235 of the Civil Code (Zhuang, 2023). After the seller retrieves the subject matter, if the sales contract is not terminated, the seller shall not dispose of the subject matter separately. The exercise of the right of retrieval is based on the seller's ownership of the subject matter and is a special institutional arrangement made by civil law to remedy the seller's rights and interests. The exercise of the right of retrieval terminates the buyer's possession, use, and benefits, and has the effect of exerting psychological pressure on the buyer. The exercise of the right of retrieval is unrelated to the process of realizing the security interest. Whether it is the resale of the subject matter by the seller after retrieving it, or the auction or sale carried out in accordance with the applicable security interest

realization process, it is a subsequent issue during the redemption period. In short, the seller's right of retrieval in the retention of ownership is limited to the effect of restoring possession of the subject matter, and is a special mechanism for protecting the seller's ownership (Li, 2020).

Fifth, in a retention of ownership sales contract, if the buyer fails to pay the agreed price, does the seller have the right to terminate the contract? If the answer to this question is from the perspective of functionalist guarantee theory, and the ownership retained by the seller is regarded as a security interest, the seller does not have the right to terminate the contract. From the perspective of formalistic guarantee, the seller has the right to terminate the contract. The Civil Code of our country does not exclude the termination of a contract from the realization of ownership retention. According to Article 65 of the Judicial Interpretation of the Guarantee System, the lessor has the right to terminate the contract. However, the effect of terminating the contract in this article is different from that in Article 566 of the Civil Code. The lessee can claim the return of the leased property value exceeding the unpaid rent and other expenses in the settlement mechanism after the termination of the contract. This is actually consistent with the procedure for realizing security interests and still reflects the functionalist guarantee view (Zhang, 2020).

Once the ownership retention contract is terminated, the seller may ultimately retain ownership, and the buyer's expectation of obtaining ownership is extinguished. The buyer has the obligation to return the subject matter at this time, and the seller should return the received price. At this time, for the seller, it is more advantageous to terminate the contract when the subject matter increases in value; When the subject matter depreciates, the seller may also request the defaulting buyer to compensate for the losses. Compared with the implementation procedure of applying security interests, the implementation path of terminating the contract imposes a stronger obligation on the buyer to pay the price. Once the buyer fails to pay the price, the seller can notify the buyer to terminate the contract. On the one hand, the buyer cannot obtain ownership of the subject matter and achieve the purpose of the sales contract; On the other hand, if the buyer causes depreciation of the subject matter during its use, in addition to returning the subject matter to the seller, they also need to compensate for the losses. Some scholars believe that it is unfair for the seller to choose to terminate the contract and enjoy value-added benefits when the subject matter increases in value. It is advocated to guarantee the legal effect of contract termination, that is, the effect of termination of ownership retention contract should be analogized and applied to Article 758 (1) of the Civil Code, which is the same as the effect of termination of the financing lease contract by the lessor. If the seller terminates the contract, they shall return the difference between the value of the subject matter and the unpaid price (Wang, 2021).

Why does the Civil Code introduce the implementation procedure of security interests in the institutional structure of ownership retention? And whether the seller retrieves the subject matter and sells it again, or claims termination of the contract, its effect should be consistent with the procedure for realizing the security interest. This article argues that, firstly, due to the characteristics of ownership retention and financial leasing transactions, the buyer and lessee often occupy and use the subject

matter for a long period of time before obtaining ownership. In order to maintain transaction stability, it is more reasonable for the buyer to bear the value-added benefits and depreciation losses. For example, in installment payments, if the parties agree to retain ownership, if the seller enjoys the value-added benefits and bears the depreciation losses, the profit seeking seller will tend to terminate the contract when the subject matter appreciates, which is unfair to the buyer; Secondly, the purpose of the seller exercising the right of retrieval is directly to urge the buyer to pay the remaining price, and subsequent reselling by the seller only needs to achieve this purpose. Therefore, the introduction of the security interest procedure into the ownership retention system is not because the ownership retention is "functionalized" as a security interest, but because the buyer enjoys the value-added benefits and bears the depreciation losses more fairly, which is consistent with the effect achieved by the security interest realization procedure.

4. The Connection between the System of Retention of Ownership and the Mortgage Right of Price Creditor's Rights

After the promulgation of the Civil Code, the mortgage right of the price creditor's right was introduced, and this security right specifically refers to the price creditor's right. So, how should the retention of ownership of the seller's price creditor's right, as agreed between the parties, be positioned? One approach is to use guarantee functionalism and draw on the Uniform Commercial Code of the United States to reconstruct the chattel and rights guarantee system, incorporating rights with guarantee functions into the guarantee field and applying unified norms for chattel guarantee. Under the Civil Code system of dividing property and debt into two parts, this approach goes against the basic logic of legal property rights, allowing the retention of ownership to produce a private law effect equivalent to a security interest. Based on the similarity of functions, the security interest system norms are analogically applied to other transactions with security attributes. For example, scholars in China believe that the same rights should be treated similarly based on the principle of equality. The retention of ownership, financial leasing, and the mortgage of price claims are all aimed at guaranteeing the realization of price claims. Therefore, both should apply the same legal norms as much as possible (Zhang, 2023). Therefore, the ownership retention transaction shall be subject to the provisions of Article 416 of the Civil Code regarding the mortgage right of price based creditor's rights by analogy; Another approach is to use the mortgage right of the price claim as a statutory security right, specifically designed for the institutional needs of guaranteeing the price claim in commercial practice. After its introduction into China's Civil Code, the guarantee of the price claim no longer needs to be achieved through non typical guarantee methods such as ownership retention and financial leasing, due to the strong guarantee property rights of the property rights.

The viewpoint of this article is that the ownership retention system in the contract section of the Civil Code should adopt the theory of ownership composition, and does not agree with the view that ownership is "functionalized" as a security interest. But if the parties agree to retain ownership on the

basis of the transaction structure stipulated in Article 641 of the Civil Code, and additional content related to the establishment of security interests is added, for example, in the ownership retention sales contract, in addition to the seller's retention of ownership agreement, the parties also explicitly present the content that the secured price of the debt is prioritized for repayment, which is referred to as the "contract with security function" in Article 388 of the Civil Code. Contracts with security function are listed alongside mortgage contracts and pledge contracts, and are the previous step in establishing security interests. According to the previous text, the guarantee function revealed in ownership retention transactions does not abandon the characteristics of ownership, and even this article opposes the view of most scholars that China's ownership retention system is based on adhering to the theory of ownership composition and introducing reasonable elements under the functionalist guarantee view. The function of ownership guarantee lies in the psychological pressure effect that the exercise of the seller's right of retrieval brings to the buyer when meeting the requirements of Article 642 (1) of the Civil Code. When used in everyday language, guarantee has one of the meanings of "guarantee" or "assurance". The use of the concept of guarantee here is only for the understanding in everyday language, as it is not linked to the priority effect of guarantee property rights in the Property Rights section of the Civil Code. Whether referring to the implementation procedures of security interests or the liquidation procedures under the effects of resale and contract termination, they are all special institutional arrangements that reflect fairness based on the characteristics of ownership retention and financial leasing compared to ordinary sales contracts. As they have the same effect as the implementation procedures of security interests, they have been introduced into the norms of the ownership retention system, which creates the illusion that the ownership retention system has been functionally transformed into a security interest. In other words, the contract with guarantee function stipulated in Article 388 of the Civil Code should be distinguished from the ownership retention and financial leasing system stipulated in the contract code (Li, 2020). Under the system logic of dividing property and debt in the Civil Code, the principle of statutory property rights should be strictly adhered to, and the system of retention of ownership should not be reconstructed under the influence of guarantee functionalism. In the context of civil law in our country, guarantee functionalism has the scope of extending the guarantee contract as the reason for the establishment of security interests. Article 57 of the Judicial Interpretation on the Guarantee System issued by the Supreme People's Court does not directly affirm that the retention of ownership is actually the establishment of a security interest. Instead, under the premise of registering within 10 days after the conclusion of the guarantee contract and the delivery of movable property, the retention of ownership and the transformation of financial leasing into a mortgage right of price debt are established. Article 416 and Article 641 of the Civil Code are actually two vastly different systems. Although the Civil Code seems to have made some kind of connection, it has actually made various modifications to the ownership retention agreement, which is completely different from its predecessor.

After the introduction of the mortgage right of price creditor's rights into the Civil Code, China's Civil

Code did not deny the significance of the independent existence of ownership retention and financial leasing. Article 57 of the Judicial Interpretation of the Guarantee System realizes the connection between ownership retention, financial leasing, and security rights. Some scholars believe that introducing the mortgage right of price debt in the movable property guarantee system is a measure to eliminate atypical guarantees. Firstly, the retention of ownership and non typical guarantee methods of financial leasing have an endogenous driving force to break away from the legalism of security interests. The retention of ownership has not been accepted by the security interest system, and its non typical guarantee status is only a rhetoric from the perspective of guaranteeing creditor's rights. The priority position of the owner for compensation has not been recognized in China's civil law (Zou, 2022); Secondly, as a special type of chattel mortgage, the mortgage right of price creditor's rights is a further expansion of the chattel guarantee function. Like ownership retention and financial leasing, it is designed to guarantee the realization of price creditor's rights. In the institutional structure of ownership retention and financial leasing, since there is no institutional element for the establishment of security rights, it has priority for repayment without security rights. Moreover, retention of ownership and financial leasing are marginal solutions outside the security interest system for seeking the realization of price claims. Some scholars believe that using property rights as collateral for price claims does not require the use of property rights, breaking through the limitations of property rights legalism and seeking security for price claims in retention of ownership and financial leasing. This approach is difficult to justify. This article argues that although the mortgage right of the price claim provides a better solution for the guarantee of the price claim of the price claim, the satisfaction of the special needs of the seller by the retention of ownership and financial leasing transactions cannot be ignored. The mortgage right of the price claim, together with the retention of ownership and financial leasing, provides the seller with a choice of transaction options.

5. The Handling of the Competition between Ownership Retention and Payment Rights, Creditor's Rights, and Mortgage Rights

There is also a possibility of competition between the mortgage right of the price claim and the retention of ownership. Scholars who hold the theory of the composition of the security right believe that if the registration is completed within 10 days from the date of delivery of the subject matter, both the ownership registration and the mortgage right of the price claim will have the effect of the mortgage right of the price claim (Liu, 2020). This article does not support this viewpoint. According to the previous discussion, when the seller who retains ownership registers its security interest with the registration authority, the seller can obtain the statutory priority right to compensation. If the seller who retains ownership registers the mortgage of the price claim with the registration authority within 10 days, they will obtain priority over the prior floating mortgage and other fixed mortgage rights; If the seller registers with the registration authority more than 10 days ago, they can only obtain a general mortgage right. Therefore, there is a possibility of competition between the retention of ownership and

the mortgage of the price debt. In the previous case, Company A was established with the project loan support provided by Bank B. Therefore, all of the company's future assets were mortgaged to Bank B. Company A now wishes to purchase equipment worth 1 million yuan from Company C. If Bank D only provides a purchase loan of 500000 yuan to Company A and sets up a mortgage on the equipment, the remaining 500000 yuan will be repaid by Company A with principal and interest after the equipment is put into operation for one year. Therefore, Company C retains ownership of the equipment for one year. In this case, there are two issues worth discussing. Firstly, in the case where the seller retains ownership, can the price provider establish a mortgage on the price claim? Secondly, which one takes priority between ownership retention and the mortgage right of price debt?

According to the viewpoint of this article, the retention of ownership should adopt the theory of ownership composition. Article 641 of the Civil Code stipulates: "Without registration, it shall not be able to resist a third party in good faith." The interpretation of this provision should adopt the construction of good faith acquisition. If the creditor fails to register its retained ownership with the registration authority, other creditors may establish movable property security rights on the subject matter based on the good faith acquisition system. If the buyer or lessee sells the subject matter separately, the third party may acquire ownership based on the good faith acquisition system. But if there is an intention in the agreement between the parties to retain ownership or finance lease to prioritize the repayment of the secured price debt, regardless of whether they have registered the mortgage with the registration authority, when the security interests of multiple creditors conflict, the provisions of Article 414 of the Civil Code should be applied, without considering the issue of good faith of the third party.

Firstly, as the formal owner, the seller, after registering their ownership of the movable property with the registration authority, without their consent, the buyer cannot establish a mortgage right for the price creditor on it. Secondly, if the seller registers a mortgage right on the movable property as a price claim, as mentioned earlier, there is a legislative difference in comparative law between the priority of the seller's retained ownership and the lender's mortgage right on the price claim, which is determined by the order of registration in China's Civil Code. In summary, we can conclude that whether ownership retention and financial leasing have the security effect of security interests and obtain priority for repayment depends on the specific circumstances of the contract and the content registered with the registration authority. In short, when the retention of ownership and financial leasing comply with the institutional structure of security interests and are on the same level as the mortgage right of price debt, their priority order shall be determined by the order of registration in accordance with Article 414 of the Civil Code.

6. Conclusion

The introduction of the mortgage right of price creditor's rights is to break the advantage monopoly of the previously established floating mortgage. The establishment of the system of price creditor's rights

mortgage has achieved a Pareto improvement among the price creditor, debtor, and the holder of the prior floating mortgage right. This article believes that the starting point of the grace period in the establishment of the mortgage right of the price creditor's right needs further detailed provisions in judicial interpretation. Some scholars suggest interpreting the limitation of delivery of movable property as actual delivery, as noted in the previous footnote (Zhang, 2023). But this idea ignores the essence of the problem. The possession of the buyer does not mean that the movable property has been delivered, and the delivery time is difficult to determine for the lender who provides the price. Therefore, it brings significant transaction risks to price providers other than the seller. And it is unrealistic to exclude the use of simple delivery in trial sales contracts and lease to buy contracts. This point needs to be considered in future judicial interpretations. Subsequently, modifications were made to the contract section of the Civil Code regarding retention of ownership and financial leasing, both of which are specific forms of transactions under purchase financing guarantees, but are separated into two different sections of the Civil Code. The Code is an outstanding representative of systematization, and the connection between ownership retention and financial leasing, as explained by the theory of ownership composition, and the mortgage rights of price claims, needs to be comprehensively considered under the Civil Code. Article 416 and Article 641 of the Civil Code are actually two vastly different systems. Although the Civil Code seems to have made some kind of connection, it has actually made various modifications to the ownership retention agreement, which is completely different from its predecessor. The interpretation of atypical guarantees should not easily break through the limitations of the legalism of property rights. The mortgage right of the price creditor provides a better solution for the guarantee of the price creditor's price creditor's right, but it cannot ignore the satisfaction of the seller's special needs by the retention of ownership and financial leasing transactions. The mortgage right of the price creditor's right, along with the retention of ownership and financial leasing, provides the seller with alternative transaction options.

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