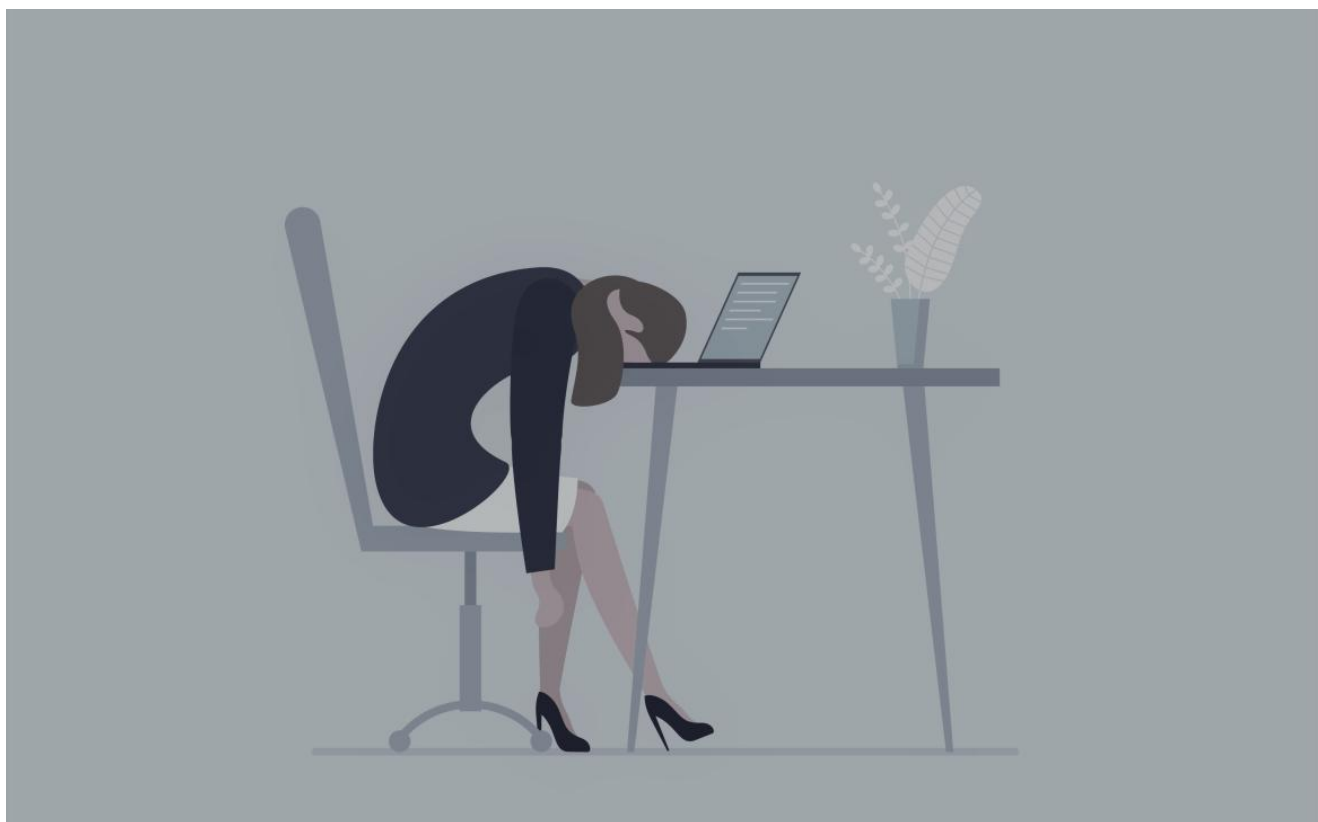


NJORD Estonia: The transactions of a debtor who has been deprived of his or her property can be reversed

It is widely known that in the event of the bankruptcy of a company, transactions made immediately prior to bankruptcy, which adversely affects creditors, are reversed. It is somewhat less well-known that the party seeking enforcement has a similar possibility in enforcement proceedings. If the debtor has transferred his property to other persons for fear of enforcement proceedings, it may be possible to recover the property from the new owners to the debtor so that it can be sold in the enforcement proceedings.



The Code of Enforcement Procedure allows a creditor who has a court judgment or other enforcement instrument which has entered into force against the debtor to demand the recovery of the transaction made by the debtor through the court if the enforcement proceedings have failed to satisfy the claim or it is likely that it will not succeed. Its idea is to reverse transactions the purpose or effect of which was to reduce the debtor's solvency.





If the other party to whom the debtor disposed of his assets knew that the transaction would adversely affect the interests of the creditor, it is possible to recover the transaction carried out no more than three years before the action for recovery was filed. If the transaction was concluded with a close relative, for example, a spouse, a close relative of the spouse or the debtor, or in the case of a legal person, a person related to it, there is a presumption that the other party to the transaction was aware of the damage to the interests of the creditor. The same presumption applies to transactions concluded up to six months before the start of the enforcement proceedings. Thus, in these cases, it will be easier to reverse the transaction. A donation or a contract for the free transfer of assets is subject to clawback within two years, regardless of whether the recipient of the gift or the person acquiring the assets free of charge knew that the interests of the creditor were adversely affected.

As is clear from the above, there are time limits on the recovery of transactions. In practice, the debtor sometimes disposes of assets long before the enforcement proceedings, sometimes at a time when the creditor's claim against him is still pending in court. The Supreme Court has found that in order to avoid the expiry of the recovery deadlines, the creditor may file a so-called preventive recovery action even before the start of the enforcement proceedings. In this case, the recovery proceedings are suspended and remain on hold until the dispute between the creditor and the debtor over the claim itself is resolved.

Unlike bankruptcy proceedings, the creditor himself must play an active role in order to recover the debtor's transactions. While in bankruptcy proceedings such actions are filed by the insolvency administrator and the creditors do not have to bother with the recovery themselves, then in order to recover the transaction in the interests of enforcing a court judgment or other enforcement instrument in the enforcement proceedings, the action must be filed by the creditor.

If the court upholds the court claim for clawback, it will declare the transaction of the transfer of property invalid. In this case, the parties to the transaction must return everything they received under the transaction. Thus, the other party to the transaction must, inter alia, return the assets to the debtor. After that, the enforcement agent will be able to sell the property in order to satisfy the creditor's claim from the money received.

If you have a claim but you know that the debtor has rendered himself without means, NJORD's lawyers will be happy to help you find a solution so that the property can be recovered to the debtor and sold in enforcement proceedings.

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