



Disposal of a totality of assets, and creditor's rights - Collection of Debts

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GRP Rainer Lawyers and Tax Advisors in Cologne, Berlin, Bonn, Bremen, Dusseldorf, Essen, Frankfurt, Hamburg, Hanover, Munich, Nuremberg, Stuttgart and London - www.grprainer.com/en conclude: Under the Insolvency Code (InsO), the trustee in bankruptcy - with regard to the assets covered by the creditor's segregation rights - must also take into account the possibility of a more favourable disposal offered by the creditor for the totality of assets. This also includes, for example, a takeover by the creditor. If the trustee in bankruptcy does not take advantage of the more favourable disposal, the creditor must be positioned as if such a possibility had been taken advantage of.

In this case, the defendant is the trustee in bankruptcy. The plaintiff and creditor had rented premises to the debtor who was using them for business. The debtor had not paid some of the rent prior to declaring bankruptcy which meant that rent was owed to the creditor.

The defendant offered the plaintiff to dispose of the assets on which the plaintiff had lien rights by selling the entire company for a partial price, following which the plaintiff offered to take over the assets. The plaintiff did not agree and sold the entire company to a third party which is now continuing the business.

Now the plaintiff demanded to be positioned as if the defendant had taken advantage of the offer. The OLG consented to the claim in full and ruled that the defendant has to pay the plaintiff the proceeds necessary to satisfy the debts. In this case it was the amount the plaintiff had asked for. But the relevant sum was not the actually collected proceeds for the movable assets, but the plaintiff's offer to take over. The court ruled that the defendant had not taken advantage of a more favourable disposal, which the plaintiff as creditor had offered, and under the Insolvency Code, the plaintiff therefore had to be placed in a position as if the defendant had accepted the offer.

However, any other proceeds from the further disposal or advantages from the disposal are irrelevant since this was not a matter of paying compensation due to the trustee's breach of duty. The Insolvency Code leaves him the choice to accept the offer or not. It was only a matter of compensating for a disadvantage.

A qualified and experienced lawyer can help to keep an overview and to fully utilize the existing possibilities.

<http://www.grprainer.com/en/Debt-Collection.html>

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Anlage: Bild

