

J. Y. Interpretation No.182 ( August 26, 1983 ) \*

**ISSUE:** The Supreme Court in its precedent held that debtors or other third parties, unless otherwise provided by the law, are not allowed to apply for a withholding of the compulsory enforcement process via the process of preliminary injunction. Is the said precedent constitutional if it is relied upon as a legal basis to deny the mortgagor's request for a withholding of the auction of mortgaged property?

**RELEVANT LAWS:**

Articles 14 and 18 of the Compulsory Enforcement Act ( 強制執行法第十四條、第十八條 ) ; Article 16 of the Constitution ( 憲法第十六條 ) ; Article 11 of the Public Notarization Act ( 公證法第十一條 ) ; Article 101 of the Non-contentious Matters Act ( 非訟事件法第一百零一條 ) .

**KEYWORDS:**

compulsory enforcement ( 強制執行 ) , withholding ( 停止執行 ) , mortgaged property ( 抵押物 ) , mortgagor ( 抵押人 ) , mortgagee ( 抵押權人 ) , ruling ( 裁定 ) .\*\*

**HOLDING:** The process of compulsory enforcement, which shall not be withheld once commenced, unless

**解釋文：**強制執行程序開始後，除法律另有規定外，不停止執行，乃在使債權人之債權早日實現，以保障

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\* Translated by THY Taiwan International Law Offices.

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otherwise provided by the law, is to ensure timely recovery of the creditor's credits and to protect the people's rights. The Precedent of the Supreme Court T.K.T. 59 (1974) determined that debtors or third parties may not apply for a withholding via the processes of a preliminary injunction. Its aim is to prevent interruption of the processes of enforcement. In the event mortgagors initiate litigation proceedings against the court's ruling which permits the auction of mortgaged property, and claim there are factors precluding compulsory enforcement, they may apply for withholdings pursuant to the law. Therefore the aforementioned Precedent cannot be said to have infringed upon Article 16 of the Constitution.

**REASONING:** Article 18, Paragraph 1, of the Compulsory Enforcement Act stipulates that: "Once the process of compulsory enforcement commences, it may not be withheld unless otherwise provided by the law." This is to prevent debtors' or third parties' blanket application for withholding, which may obstruct enforcement processes and prevent timely

人民之權利。最高法院六十三年度台抗字第五十九號判例，認債務人或第三人不得依假處分程序聲請停止執行，係防止執行程序遭受阻礙，抵押人對法院許可拍賣抵押物之裁定，主張有不得強制執行之事由而提起訴訟時，亦得依法聲請停止執行，從而上開判例即不能謂與憲法第十六條有所牴觸。

**解釋理由書：**強制執行法第十八條第一項規定：「強制執行程序開始後，除法律另有規定外，不停止執行。」乃防止債務人或第三人任意聲請停止執行，致執行程序難於進行，債權人之債權不能早日實現。抵押權人聲請拍賣抵押物，經法院為許可強制執行之裁定而據以聲請強制執行，抵押人對該裁定提起抗告或依同法第十四條提起異

recovery of the creditor's credit. When applying for an auction of mortgaged property, the mortgagee may apply for compulsory enforcement pursuant to the court's affirmative ruling of compulsory enforcement. If the mortgagor appeals against or raises an objection to the said ruling, under Article 14 of the same Act, the court may withhold its ruling of compulsory enforcement in accordance with Article 18, Paragraph 2, of the same Act. In the event the mortgagor institutes proceedings based on reasons in substantive law, existing before the said ruling, and claims that the said ruling may not be enforced, it is a more serious matter than the procedures of ruling. Therefore, according to the legal principle of "balancing test", with reference to Article 11, Paragraph 3, of the Public Notarization Act and Article 101, Paragraph 2, of the Non-contentious Matters Act, and also taking into consideration the mortgagor's interests, the mortgagor may apply for a withholding of the ruling of compulsory enforcement under Article 18, Paragraph 2, of the Compulsory Enforcement Act. As to preliminary injunctions, they are creditors'

議之訴時，法院得依同法第十八條第二項為停止強制執行之裁定，抵押人如以該裁定成立前實體上之事由主張該裁定不得為執行名義而提起訴訟時，其情形較裁定程序為重，依「舉輕明重」之法理，參考公證法第十一條第三項及非訟事件法第一百零一條第二項規定，並兼顧抵押人之利益，則抵押人自得依強制執行法第十八條第二項規定聲請為停止強制執行之裁定。假處分，乃債權人就金錢請求以外之請求欲保全強制執行，或當事人於有爭執之法律關係聲請定暫時狀態之程序，並非停止執行之法定事由，最高法院六十三年度台抗字第五十九號判例，認債務人或第三人不得依假處分程序聲請停止執行，係防止執行程序遭受阻礙，抵押人對法院許可拍賣抵押物之裁定，主張有不得強制執行之事由而提起訴訟時，既得依法聲請停止執行，從而上開判例即不能謂與憲法第十六條有所牴觸。

requests, other than monetary requests, as to compulsory enforcement, or procedures for the maintenance of status quo requested by parties of a dispute in law. They are not legal bases for the withholding of enforcement procedures. The Precedent of the Supreme Court T.K.T. 59 (1974) determined that debtors or third parties may not apply for a withholding via the processes of a preliminary injunction. Its aim is to prevent the interruption of the processes of enforcement. In the event mortgagors initiate litigation proceedings against the court's ruling which permits the auction of mortgaged property, and claim there are factors precluding compulsory enforcement, they may apply for withholdings pursuant to the law. Therefore the aforementioned Precedent cannot be said to have infringed upon Article 16 of the Constitution.