



CZECH REPUBLIC

JUDGEMENT

IN THE NAME OF THE REPUBLIC

The District Court for Prague 2, presided over by Judge Mgr. Irena Městecká, has ruled in the matter of

Plaintiff: **Tomáš Zach**, born March 2, 1978,
residing at Kolín V, Raisova 57,
represented by Attorney JUDr. Dan Dvořáček,
with a registered address at AK Prague 1, Opletalova 37,
against

Defendant: **The Czech Republic - Ministry of Justice**, ID No. 00025429,
registered address at Prague 2, Vyšehradská 16,
acting through the Office for Representation of the State in Property Matters,
registered address at Prague 2, Rašínovo nábřeží 390/42,

regarding the amount of CZK 2,533,390.68 with accessories,

hereby decides:

I. The Defendant is obligated to pay the Plaintiff the amount of CZK 1,500,000 within 15 days of the legal force of this judgment.

II. The Defendant is obligated to pay the Plaintiff the amount of CZK 826,444.38 within 15 days of the legal force of this judgment.

III. The Defendant is obligated to pay the Plaintiff the amount of CZK 163,103.40 within 15 days of the legal force of this judgment.

IV. The claim for the Defendant to be ordered to pay the Plaintiff the amount of CZK 43,842.90 is denied.

V. The Defendant is obligated to reimburse the Plaintiff for legal costs in the amount of CZK 514,072 to the legal representative of the Plaintiff within 15 days of the legal force of this judgment.

The accuracy of the original text is confirmed by Bc. Šárka Kašparová.

Reasoning:

1. The Plaintiff originally sought from the Defendant the payment of CZK 6,998,614.30, which is intended to represent damages pursuant to Act No. 82/1998 Coll., on Liability for Damage Caused in the Exercise of Public Power by Decision or Incorrect Administrative Procedure and on the Amendment of Act No. 358/1992 Coll., on Notaries and Their Activities (Notarial Code) (hereinafter referred to as "the Act"), in connection with the proceedings of the Regional Court in the insolvency case registered under file number KSPH 39 INS 15271/2011 (hereinafter referred to as "the assessed proceedings") concerning the debtor Vitamín - Cooperative of Fruit Growers, Kutná Hora, with its registered office at Kutná Hora, Seifertovy sady 38, Company ID No. 47048247. In the context of this insolvency proceeding, the original insolvency trustee, JUDr. Přemysl Kraus, initiated steps to liquidate the debtor's assets through the auction office RAK CZ a.s. in a public auction. On February 21, 2013, the insolvency trustee passed away, and on March 12, 2013, the Regional Court issued resolution No. KSPH 39 INS 15271/2011-B-70, which in part I appointed a new insolvency trustee, JUDr. Michal Krejčí, located at Praha 5, K Cementárně 1427/1a, and in part III instructed the new insolvency trustee to continue the liquidation of the debtor's assets through auction as had been arranged by the original trustee with RAK CZ a.s. The new insolvency trustee acted in accordance with the court's directive. On March 13, 2013, a public voluntary auction was held at the restaurant at U Závoje located at Prague 1, Havelská 500/25, during which the following items were liquidated from the debtor's assets: a) a collection of real estate, b) a collection of movable items, c) rights from trademarks, d) a part of the enterprise – rights and obligations arising from lease agreements, as specified in the contractual relations set forth in the agreement. The Plaintiff became the buyer at a price of CZK 3,860,000, which he paid in full. However, this auction later turned out to be invalid, as its invalidity was determined by a judgment dated October 17, 2016, No. 21 C 20/2014-177, which became effective on July 20, 2017, with the reason for invalidity being the absence of approval of the auction execution contract by the creditor's committee of the debtor. The Plaintiff believes that the actions of the Regional Court in Prague, which was aware of the state of affairs and subsequently ordered the new insolvency trustee to continue the auction as arranged, constitute an unlawful procedure. The Regional Court, as the insolvency court, was evidently aware that its directive was unlawful, as it had been alerted – at least by a proposal from the creditor, Česká inkasní bureau.cz, s.r.o., to desist from the auction dated March 6, 2013 – to the fact that the necessary approval from the creditor's committee was absent. Therefore, the Regional Court acted unlawfully in the assessed proceedings when it instructed the insolvency trustee to continue the auction under such circumstances, thereby causing the auction to take place, which was subsequently deemed invalid due to its unlawfulness. As a result of this unlawful conduct, the Plaintiff incurred damages in the form of costs for financing the price that he had to pay at the auction, as he entered into a loan agreement with Dioptra, a.s. Turnov, located at Turnov, Sobotecká 1660, Company ID No. 48171191, on April 9, 2013, for financing the auctioned item, with an interest rate of 1.5% per month on the borrowed amount. The Plaintiff intended to sell part of the auctioned property based on a future contract concluded with Pivovar Dačický s.r.o., however, due to the invalidity of the auction, the Plaintiff did not acquire the relevant property and could not liquidate it further and thus failed to repay the loan. The paid auction price has not yet been refunded to the Plaintiff by the insolvency trustee. Consequently, the Plaintiff neither has the auctioned property nor the paid money and is only compelled to pay interest on the outstanding loan, which as of April 20, 2014, amounts to CZK 6,998,614.30.
2. In its response to the complaint, the Defendant did not dispute that the Plaintiff had submitted a claim for damages in the amount of CZK 6,998,614.30 on April 23, 2019, pursuant to the Act; however, in the context of the extrajudicial proceedings, it additionally demanded from the Defendant the payment of

damages in the amount of CZK 3,860,000 and the provision of compensation for non-pecuniary damage in the amount of CZK 100,000. The Defendant further stated that for the establishment of the state's liability under the Act, fulfillment of three conditions is necessary: the existence of an unlawful decision or incorrect administrative procedure, the occurrence of damage to the injured party, and such damage must be a direct consequence of the unlawful decision or incorrect administrative procedure, with these prerequisites needing to be met cumulatively. In the assessed proceedings, a resolution was issued on March 12, 2013, establishing the new insolvency trustee JUDr. Michal Krejčí, who was instructed to continue the liquidation of the debtor's assets through auction, as previously arranged by the original trustee with the auction office RAK CZ a.s. On March 13, 2013, a public auction took place concerning the matter, during which the auction object was acquired by the Plaintiff. Subsequently, as a result of a proposal from the Regional Public Prosecutor's Office, a resolution was issued on June 17, 2013, directing the insolvency trustee to include the items auctioned to the Plaintiff in the estate of the debtor, so that he could no longer dispose of them. On May 30, 2013, a lawsuit for the determination of the invalidity of the public voluntary auction was filed at the District Court for Prague 1 by P. Kabát, and a judgment was issued on October 17, 2016, declaring the aforementioned public voluntary auction conducted on March 13, 2013, to be invalid. The reasoning indicates that the auction was conducted based on an ineffective auction execution agreement, as it was not proven that the creditor's committee had adopted a resolution approving the agreement for the public voluntary auction. The judgment became legally effective on July 20, 2017.

If the Plaintiff claims the existence of an unlawful decision, which is said to be the resolution of the Regional Court in Prague dated March 12, 2013, the Defendant has not found the existence of an unlawful decision within the meaning of the law in this case. However, even in the event of the existence of an unlawful decision or incorrect administrative procedure, it would not be possible to grant the Plaintiff's claim, as it is not clear from the complaint what items make up the claimed amount and how the Plaintiff arrived at this amount. The Plaintiff further stated that he does not have access to the financial resources that the insolvency trustee, JUDr. Michal Krejčí, is withholding, nor does he have access to the auctioned property, although it is unclear whether the amount allegedly withheld by the insolvency trustee is included in the compensation sought by the Plaintiff. The Defendant indicated that the insolvency trustee is a private person acting in the proceedings in his own name and at his own risk. Therefore, if the insolvency trustee is still withholding the relevant financial resources, it is necessary to address the request for a refund directly to him. In this context, the Defendant referred to the principle of "the state as the last debtor." The Defendant also stated that compensation for damages can only be provided if there is an undisputed conclusion that the Plaintiff has undoubtedly incurred damages. The Plaintiff has not submitted documents from which the existence and extent of damage would clearly emerge, and if the Plaintiff is requesting compensation for paid contractual interest or a contractual penalty, it must be concluded that there is no causal link between the alleged unlawful decision and the occurrence of damage since it cannot be attributed to the Defendant that the Plaintiff entered into a loan agreement and that he furthermore agreed to significantly unfavorable terms in it. The Defendant proposed that the court dismiss the complaint.

3. In a submission dated February 21, 2020, the Plaintiff supplemented that he paid interest for the period from February 1, 2014, to January 31, 2017, totaling CZK 2,160,000 from his own cash income, at rates of CZK 60,000 per month over 36 months. He was compelled to pay interest on the amount he borrowed for the purpose of financing the thwarted project based on the agreement dated April 9, 2013, entered into with the company Dioptra, a.s. Turnov for financing the auctioned item, at an interest rate of 1.5% per

month on the borrowed amount. The Plaintiff acknowledges that the set of cash receipts he submitted is not complete and does not fully cover the specified period. However, this evidential deficit is remedied by the content of the assignment agreement, which the Plaintiff has only in the form of an unsigned proposal; the signed original is in the file of the court executor Mgr. Martina Havlová, Executor Office Prague 10, located in Prague 9, Českomoravská 18/142, case No. 183 EX 526/17, where it was filed by the entitled party. In the said enforcement proceedings, the debt from the unpaid loan is being enforced. The executor recovered an amount of CZK 744,630.14, from which CZK 596,181.84 was allocated to the receivable of the entitled party, and CZK 148,448.30 to the costs of enforcement.

4. In a further supplement dated July 31, 2020, the Plaintiff indicated that he sees the incorrect administrative procedure in the actions of the Regional Court in Prague within the assessed proceedings, which, despite being warned at least by two letters—one from the Regional Public Prosecutor's Office in Prague dated March 11, 2012, and the other from the creditor Česká inkasní bureau.cz, s.r.o., dated March 6, 2012, to desist from holding the auction—nonetheless ordered the auction to be carried out by resolution dated March 12, 2013, which subsequently led to the invalidity of the auction conducted in this manner, precisely for the reasons explicitly brought to the attention of the insolvency court. The Plaintiff further stated that he considers the resolution dated March 12, 2013, issued by the Regional Court in Prague to be unlawful in the assessed proceedings, in which a new insolvency trustee was appointed, who was then instructed to continue the liquidation of the debtor's assets through auction as previously arranged by the original trustee with the auction office RAK CZ a.s. The Plaintiff further stated that the creditor Dioptra, a.s., due to the uncollectibility of the receivable, assigned it to Ing. Mirko Spurný, who is enforcing it in enforcement proceedings led by the court executor Mgr. Martina Havlová, Executor Office Prague 10, under case number 183 EX 526/17, based on an enforcement order issued by the District Court for Prague 8 on April 25, 2017, No. 15 EXE 2628/2017-34. The Plaintiff suffered damages both in the form of interest that he unjustly paid on the loan, which should have been returned almost immediately, and in the form of enforcement costs that would not have arisen had there been no enforcement, as the loan would have been paid on time. In the enforcement proceedings, an amount of CZK 1,033,390.68 has so far been collected, which represents damages, with CZK 206,946.30 corresponding to enforcement costs and CZK 826,444.38 allocated to capitalized interest on the loan. At the same time, the Plaintiff also voluntarily paid interest on the loan in the amount of CZK 1,500,000. Thus, the total amount to date amounts to at least CZK 2,533,390.68.
5. At the hearing on November 30, 2020, the Plaintiff withdrew the complaint regarding the amount of CZK 4,465,223.62 and continued to demand the payment of CZK 2,533,390.68 with accessories.
6. The matter was decided by a judgment dated November 30, 2020, No. 20 C 72/2019-262, which terminated the proceedings regarding the amount of CZK 4,465,223.62 (part I), while the remaining portion of the complaint was dismissed due to the absence of a liability title (part II), and the Plaintiff was ordered to reimburse the Defendant for the costs of the proceedings (part III). By a resolution of the Municipal Court in Prague dated May 20, 2021, No. 20 Co 146/2021-291, amended by a corrective resolution dated May 20, 2021, No. 20 Co 146/2021-292, the judgment was annulled, except for the part regarding the partial termination of the proceedings, and the matter was returned to the first-instance court for further proceedings. The appellate court concluded that the material conditions for establishing the state's liability for damages caused by the unlawful decision of the insolvency court dated March 12, 2013, within the meaning of § 8(1) of the Act, were met, as the consequence of the unlawful decision of the insolvency court was the invalidity of the auction in which the Plaintiff participated as a bidder, and

from his claims, the causal relationship between the property damage and this decision is evident. The appellate court instructed the first-instance court to assess based on the evidence presented by the Plaintiff whether the claimed damage was incurred and whether it is in causal relation to the insolvency court's decision in its entirety.

7. In a submission dated August 26, 2021, the Plaintiff supplemented that the enforcement proceedings under case number 183 EX 526/17 had been completed by full collection, including capitalized default interest in the amount of CZK 875,307.79 from the provided loan from February 1, 2014, to October 20, 2016, and enforcement costs, which according to the issued enforcement orders amounted to at least CZK 1,654,408.80. The entitled party in the enforcement did not assert a claim for capitalized interest on the loan at a rate of 1.5% per month for the period from February 1, 2014, to January 31, 2017, because it had not been transferred by the original creditor and had been paid directly by the Plaintiff to the creditor Dioptra Turnov a.s. The Plaintiff emphasized that he had suffered damages greater than those claimed.
8. In a submission dated August 26, 2021, supplemented by a submission dated August 31, 2021, the Plaintiff further newly demanded the amount of CZK 2,533,390.68 as property damage, which he sought to compensate in the order of contractual interest amounting to CZK 2,160,000, followed by contractual interest recovered in enforcement proceedings in amounts of CZK 14,564.52 and CZK 566,129.03, as well as default interest amounting to CZK 875,307.79, enforcement costs and costs of the entitled party totaling CZK 1,654,408.80 and CZK 113,207.60 respectively, along with capitalized contractual penalties amounting to CZK 4,008,000. The Plaintiff contends that the damage he incurred amounts to at least CZK 9,391,617.74, and since he is requesting a significantly lower amount in the lawsuit, he believes that the proven extent of damage fully covers the claimed amount. The Plaintiff therefore requested the court to assess the validity of his claim in the order specified for the individual components, and to sequentially offset the claimed amounts against these individual claims. He also indicated that if some established claims are sufficient to satisfy the lawsuit, there is no need to assess the validity of additional claims.
9. During the hearing held on March 21, 2022, the court requested the Plaintiff to clarify the subject of the proceedings due to the Plaintiff having repeatedly modified his statements regarding the composition of the damages incurred throughout the proceedings, resulting in ambiguity about what precisely the Plaintiff is claiming in the lawsuit. In response to the court's request regarding the subject of the proceedings, the Plaintiff referred to his submissions dated August 26, 2021, and August 31, 2021, stating that in the event the court does not recognize any of the claimed demands with a higher priority, he established a further order in which the court may grant fulfillment for additional claims at its discretion.
10. By a resolution dated March 21, 2022, No. 20 C 72/2019-348, the court did not permit this change to the complaint on the grounds that the change contained in the submissions dated August 26, 2021, and August 31, 2021, was inadmissible for consideration. It is the Plaintiff's responsibility to clearly specify what the subject of the proceedings is and what he derives from the facts, and not the court's responsibility. Thus, the subject of the proceedings remained the Plaintiff's original claim for the payment of CZK 2,533,390.68, which comprises CZK 206,946.30 for enforcement costs, CZK 826,444.38 for capitalized default interest accrued from February 1, 2014, to October 20, 2016, collected in enforcement, and CZK 1,500,000 for capitalized interest on the loan for the period from February 1, 2014, to January 31, 2017, paid directly by the Plaintiff to the creditor.

11. At the hearing on April 27, 2022, the Plaintiff added that he had received all the funds from the loan meant for use in the auction, which he indeed did; therefore, he was the only one called upon by the creditor to make the payment, and the enforcement was subsequently extended to his wife's property due to their joint ownership. The Plaintiff's wife and mother were merely named as co-debtors in the loan agreement to strengthen the creditor's position.
12. The court established in these proceedings that the Plaintiff, in a letter dated April 20, 2018, delivered to the Defendant on April 23, 2018, asserted a claim for the payment of CZK 6,998,614.30 as compensation for damages that were to have been incurred in the assessed proceedings. The Defendant responded in a letter dated April 30, 2019, stating that it did not consider this claim to be justified and, therefore, no compensation for damages was provided.
13. The proceedings further established that the Regional Court in Prague, by a resolution dated November 22, 2011, No. KSPH 39 INS 15271/2011-A-24, declared the bankruptcy of the debtor Vitamín - Cooperative of Fruit Growers, located at Kutná Hora, Seifertovy sady 38, and appointed JUDr. Přemysl Kraus as the insolvency trustee. This resolution became legally effective on December 22, 2011. In a letter dated March 6, 2012, addressed to the Regional Court in Prague, the creditor Česká inkasní bureau.cz, through its attorney JUDr. Vladimír Jablonský, proposed that the insolvency court refrain from conducting the public auction of the debtor's assets scheduled for March 13, 2013, arguing that since an insolvency trustee had not been appointed for the debtor's estate, the auction could not be conducted in accordance with the principles governing insolvency proceedings. The lack of an appointed insolvency trustee could also lead to further specific issues; if a public auction were to be held during a time when the insolvency trustee lost the legal authority to perform their functions and a new insolvency trustee had not yet been appointed, there would be no guarantees for the debtor's creditors that the proceeds from the liquidation of the estate would indeed be transferred to the new insolvency trustee's account once appointed, as they would not be in the capacity of the proposer of the voluntary auction and would lack the powers conferred specifically on the proposer by Act No. 26/2000 Coll. Moreover, conducting the public auction in this particular instance on the scheduled date could potentially jeopardize the purpose of the insolvency proceedings. In a letter dated March 11, 2013, addressed to the Regional Court in Prague within the framework of the assessed proceedings, the Regional Public Prosecutor's Office in Prague stated that it had been unable to locate in the insolvency register whether the auction execution agreement concluded between the insolvency trustee as the proponent and the company RAK CZ as the auctioneer had subsequently been approved by the creditor's committee in accordance with § 287(2) of the Insolvency Act so that it could take effect. Therefore, the Regional Public Prosecutor's Office in Prague maintains the position that under these circumstances, if the insolvency trustee has not remedied the identified deficiencies or provided the necessary documentation to the insolvency court during the interim, these facts may pose a risk of potential future invalidation of the results of the public auction. By a resolution dated March 12, 2013, No. KSPH 39 INS 15271/2011-B-70, which became legally effective on April 3, 2013, the Regional Court in Prague appointed a new insolvency trustee, JUDr. Michal Krejčí, residing at Praha 5, K Cementárně 1427/1a, in place of the previous trustee, JUDr. Přemysl Kraus, who passed away on February 21, 2013 (part I). It stated that the appointment of the new trustee would take effect from the date of publication of this resolution in the insolvency register, i.e., from March 12, 2013 (part II), and instructed the newly appointed trustee to continue the liquidation of the debtor's assets by auction, as was arranged by the previous trustee with the auction office RAK CZ a.s. (part III). In the reasoning, the court stated, among other things, that the insolvency law does not explicitly address how to proceed when a trustee dies, and the court did not find grounds for the removal of the trustee from office. Although there was

currently no appointed trustee, insolvency proceedings require that an insolvency trustee appears in the proceedings (pursuant to § 27 of the Insolvency Act) appointed in a manner contemplated by law. This involves an action by the chairman of the appropriate court; upon the death of a trustee, a substitute must take their place. Therefore, the court decided to appoint the current substitute to the role of the original trustee, and since the substitute must assume their role immediately after this decision, the effectiveness was explicitly determined by the publication in the insolvency register. To avoid any doubts about the scheduled auction of the debtor's assets on March 13, 2013, the court instructed the new trustee, in the interest of efficiency and to prevent damage to the property (necessary care for fruit trees, etc.), to continue the actions of the original trustee in liquidating the debtor's assets, particularly in the scheduled auction.

14. It was further established that on March 6, 2013, the Plaintiff, as the future seller on one side, entered into a future purchase agreement with the company Obila, a.s. as the future buyer on the other side for the purchase of real estate specified in the agreement, which was to be auctioned in the matter at hand. If the future seller is successful in the planned auction, they must promptly inform the future buyer, but this obligation also applies in the event of an unsuccessful auction. The parties agreed that at the request of either party, they would conclude a purchase agreement in the future, the subject of which would be the transfer of the collection of real estate specified in the agreement from the future seller to the future buyer. The purchase price would be established as the auction price that the future seller would be obliged to pay, increased by 15%, but not exceeding CZK 4,300,000. In the event that the conditions for concluding the future purchase agreement are not met by the end of 2013 or if the property is not auctioned off by the future seller, the parties agreed on the termination of the agreement.
15. It was further established that on April 9, 2013, the company Dioptra, a.s. Turnov, located at Sobotecká 1660, Turnov, Company ID No. 48171191, as the creditor on one side, and the Plaintiff as debtor 1, Ting Zach, residing at Praha 4, Třeboňská 251/3, as debtor 2, and MUDr. Renata Zachová, residing at Davle, V Kruhovce 217, as debtor 3, concluded a loan agreement. Under this agreement, the creditor agreed to provide the debtors with a loan in the amount of CZK 4,000,000, and the debtors agreed to repay the loan provided in accordance with the agreement along with all related accessories. The due date for the loan was set for January 31, 2014, and the debtors also agreed to repay to the creditor the provided loan under this agreement in a lump sum along with interest on the loan at the rate of 1.5% per month to the bank account indicated by the creditor in the agreement or to the bank account that the creditor would inform the debtor of in writing. If the debtors fail to repay the provided loan, including its interest, properly and on time, they are obliged to pay the creditor a contractual penalty of 0.3% of the outstanding amount daily until December 31, 2014.
16. It was further established that on April 11, 2013, a payment of CZK 3,560,000 was made from account No. 1051108403 as a final payment of the purchase price for "Vitamina".
17. It was also established that on June 21, 2013, JUDr. Michal Krejčí informed the Plaintiff that based on the auction held on March 13, 2013, he had become the successful bidder and that the trustee had filed a lawsuit to determine the invalidity of the auction due to the exclusion of the Plaintiff from the circle of potential acquirers of the assets and regarding the inventory of the debtor's property.

The accuracy of the original text is confirmed by Bc. Šárka Kašparová.

18. It was further established that JUDr. Michal Krejčí, the insolvency trustee of the debtor Vitamína - Cooperative of Fruit Growers, informed Mgr. Bc. Tomáš Kasa, LL.M., in a letter dated January 13, 2014, regarding the return of the amount of CZK 3,860,000 that this amount was held in the account of the insolvency trustee established for the debtor (Vitamín - Cooperative of Fruit Growers, Company ID No. 47048247) and that it would not be disbursed in any manner. The insolvency trustee indicated that no funds would be returned at that time, and that they would be resolved only after the court's final decision on the lawsuits challenging the validity of the public voluntary auction. If the insolvency trustee were obliged to return the funds, they would be returned along with any accessories.
19. It was further established that the District Court for Prague 1, by a judgment dated October 17, 2016, No. 21 C 20/2014-177, in connection with the decision of the appellate court dated May 24, 2017, in the matter of the Plaintiff Pavel Kabát, born September 22, 1959, residing at Zásmyky, Sokolská 327, against the Defendants: 1) JUDr. Michal Krejčí, insolvency trustee of the debtor Vitamín - Cooperative of Fruit Growers, Company ID No. 14997096, located at Praha 5, K Cementárně 1427/1a, 2) RAK CZ a.s., located at Praha 1, Revoluční 725/11, Company ID No. 25653849, 3) Tomáš Zach, born March 2, 1978, residing at Kolín, Grunta 33, 4) Vitamín - Cooperative of Fruit Growers, located at Kutná Hora, Seifertovy sady 38, Company ID No. 47048247, concerning the invalidity of the public auction, ruled that the public voluntary auction conducted by Defendant No. 2 on March 13, 2013, at the restaurant of U Závoje, located at Praha 1, Havelská 500/25, during which the assets of the debtor Vitamín - Cooperative of Fruit Growers, Company ID No. 47048247, located at Kutná Hora, Seifertovy sady 38, were to be auctioned off, is invalid. In its reasoning, the court stated, among other things, that the auction was conducted based on an ineffective auction execution agreement and that the condition of § 19 of the Public Auctions Act was not met, as a public auction can only be conducted based on a valid and effective auction execution agreement. The judgment became legally effective on July 20, 2017. The course of this proceeding was not contested by the parties.
20. It was further established that on October 20, 2016, a notarial record No. NZ 531/2016, N 573/2016, was drawn up by JUDr. Jitka Krejčíková, a notary in Lysá nad Labem, in which the participants, namely the commercial company Dioptra, a.s. Turnov, as creditor, the Plaintiff as debtor 1, also acting as the first obligated person, Ms. Ting Zach as debtor 2, also acting as the second obligated person, and Ms. MUDr. Renata Zachová as debtor 3, also acting as the third obligated person, requested the drafting of an agreement in which the creditor and the debtors declared as undisputed that a contractual legal relationship arose between them based on the loan agreement dated April 9, 2013, whereby the creditor was to provide the debtors with a loan in the total amount of CZK 4,000,000, and the debtors were to jointly and severally repay the creditor the loan provided in the amount of CZK 4,000,000 along with all accessories. The loan was due on January 31, 2014, and was to be repaid jointly and severally by the debtors along with interest at a rate of 1.5% per month in a lump sum to the bank account specified by the creditor in the notarial record. If the debtors failed to repay the loan along with the agreed interest properly and on time, they undertook to pay the creditor a contractual penalty of 0.3% of the outstanding amount for each day of delay, with the creditor being entitled to charge the contractual penalty only until December 31, 2014. Furthermore, if the debtors did not repay the provided loan of CZK 4,000,000 on time, no contractual default interest was agreed upon; in that case, the debtors would be obliged to pay the creditor statutory default interest at a rate of 0.05% as the repo rate announced by the Czech National Bank as of December 31, 2013, amounting to a total statutory default interest of 8% at the date of the debtors' default, i.e., February 1, 2014, in the amount of 8.05%. The debtors agreed to settle their debt

jointly and severally no later than March 31, 2017. At the same time, the debtors consented to direct enforceability.

21. It was further established that enforcement proceedings were conducted against the property of the Plaintiff and his wife in favor of the entitled party, Ing. Mirko Spurný, by court executor Mgr. Martina Havlová under case number 183 EX 526/17. The entitled party acquired the claim being enforced from the creditor Dioptra Turnov, a.s., which arose from the loan agreement dated April 9, 2013, and consists of the principal amount of CZK 4,000,000, a contractual penalty amounting to CZK 4,008,000, contractual interest at a rate of 1.5% per month for the period from the provision of the loan to the loan's due date (January 31, 2014) amounting to CZK 571,216.44 and CZK 14,695.89, and statutory default interest at a rate of 8.05% per annum for the period from February 1, 2014, to October 20, 2016, amounting to CZK 875,307.79. As of June 15, 2020, the statutory accessories of the debt amounted to CZK 826,444.38, and the enforcement costs amounted to CZK 206,946.30. The enforcement costs were determined by 13 payment orders issued on March 13, 2020, April 6, 2020, July 20, 2020, July 24, 2020, August 12, 2020, September 30, 2020, October 5, 2020, October 13, 2020, and November 17, 2020, totaling CZK 1,654,408.80. According to the payments, an amount of CZK 875,307.79 would have been recovered by March 3, 2020, i.e., before the execution of the auction of real estate. The enforcement proceedings were completed with full recovery on December 23, 2020.
22. It was further established that the interest on the loan at the rate of 1.5% per month (i.e., CZK 60,000) for the period from February 1, 2014, to January 31, 2017, was not assigned to Ing. Mirko Spurný. The Plaintiff paid this amount in cash to the creditor Dioptra Turnov, a.s. The payment was evidenced by cash receipt documents amounting to CZK 1,440,000, and the communication from the creditor's legal representative, along with the assignment agreement dated February 13, 2017, confirmed that the interest for the stated period had been paid in full to the creditor.
23. From the remaining decisions of the Regional Court in Prague related to the proceedings conducted under case number KSPH 39 INS 15271/2011 and the related incidence disputes, the court did not find any facts that were significant for these proceedings; therefore, it did not further consider this evidence in the reasoning of the judgment.
24. According to publicly available data from the CNB statistical database – the ARAD time series database, the court is aware that banks were providing consumer loans to households (without fixed rates) in April 2013 at an interest rate of 14.63% per year.
25. The court concluded in this matter that the factual state corresponds with the factual findings described above. The factual findings established from the evidence presented in the proceedings are sufficient to assess the merits of the claim asserted by the Plaintiff, as outlined below. The court did not reject any proposal for the supplementation of evidence; the inquiry directed at the creditor to prove the payment of interest on the loan for the period from February 1, 2014, to January 31, 2017, was not executed, as the Plaintiff did not insist on its performance, and the established factual state was entirely adequate for deciding the matter itself.
26. According to § 1(1) of the Act, the state is liable under the conditions stipulated by this Act for the damage caused in the exercise of state power. According to § 2 of the Act, liability for damage under this Act cannot be excluded. According to § 5 of the Act, the state is liable under the conditions specified by this Act for

damage caused a) by a decision issued in civil judicial proceedings, in administrative proceedings, in proceedings under the Administrative Court Rules, or in criminal proceedings, b) by incorrect administrative procedure. According to § 7(1) of the Act, the right to compensation for damages caused by an unlawful decision is held by the participants in the proceedings in which the decision was made that resulted in the damage. According to § 8(1) of the Act, the claim for compensation for damages caused by an unlawful decision can only be asserted if the final decision has been annulled or amended by the competent authority due to unlawfulness. The decision of this authority is binding on the court ruling on compensation for damages. According to § 8(2) of the Act, if the damage was caused by an enforceable unlawful decision regardless of its legal effect, the claim can also be asserted if the decision was annulled or amended based on a proper legal remedy.

27. It was proven in the proceedings that the Plaintiff preliminarily submitted his claim to the Defendant in accordance with § 14(1) and (3) of the Act; therefore, the matter can be heard by the court (§ 15(2) of the Act).
28. The prerequisites for the state's liability for damages are the fulfillment of three conditions: 1) the existence of an unlawful decision or incorrect administrative procedure, 2) the occurrence of damage, and 3) a causal relationship between the incorrect administrative procedure or unlawful decision and the occurrence of the damage. Thus, the unlawful decision and the occurrence of damage must be interrelated in a cause-and-effect relationship.
29. As stated by the appellate court in its resolution dated May 20, 2021, No. 20 Co 146/2021-291, the resolution of the insolvency court dated March 12, 2013, must be considered an unlawful decision within the meaning of § 8(1) of the Act, thus fulfilling the condition for the existence of a liability title. The receivable to Ing. Mirko Spurný, and the Plaintiff became obligated to repay the principal amount along with interest as stipulated in the loan agreement.
30. The court further examined whether the damages claimed by the Plaintiff have indeed occurred and whether they are causally connected to the unlawful decision, noting that the Plaintiff is seeking damages in the amount of CZK 206,946.30 for the costs incurred in enforcement, CZK 826,444.38 for capitalized default interest accrued from February 1, 2014, to October 20, 2016, collected in enforcement, and CZK 1,500,000 for capitalized interest on the loan for the period from February 1, 2014, to January 31, 2017, which was paid directly by the Plaintiff to the creditor.
31. Regarding the condition of the existence of damages that the Plaintiff can assert against the state, the court recalls that, according to established case law, actual damage is understood as a loss that represents a decrease in the property condition of the injured party compared to the state before the harmful event. For the legal prerequisite of damage to be met, the damage must exist at the time the court decides on the asserted claim.
32. The Plaintiff acquired property in an auction on March 13, 2013, for which he paid the auction price. The auction was declared invalid by a decision of the District Court for Prague 1 dated October 17, 2016, case No. 21 C 20/2014, in connection with a ruling from the Municipal Court in Prague dated May 24, 2017 (the judgment became legally effective on July 20, 2017). The Plaintiff asserts that he financed the auction price with a loan, which he would have properly repaid by the due date, i.e., by January 31, 2014, had the

auction not been held, or if he had not successfully acquired the property, or if the auction had been valid and he had sold the auctioned property based on the concluded future purchase agreement.

33. The court finds it established that the Plaintiff had a business intention to acquire the predetermined property in the auction, which he would then sell to a specific buyer who had expressed interest in this particular property, with a certain markup based on the future purchase agreement dated March 6, 2013. The Plaintiff enrolled in the auction held on March 13, 2013, and won the auction. To secure the necessary funds, the Plaintiff, along with two co-debtors (his wife and mother), subsequently entered into a loan agreement on April 9, 2013, under which the Plaintiff received financial resources amounting to CZK 4,000,000, which were used to pay the auction price and were to be repaid by January 31, 2014. The future purchase agreement was not executed by the end of 2013 due to the ongoing lawsuit to determine the invalidity of the auction, the outcome of which the Plaintiff had to await, and the auction was subsequently found invalid on July 20, 2017. The court does not find the Plaintiff's actions to be disproportionately risky; the Plaintiff had secured a potential method to sell the specific property, subsequently won the auction, and only later obtained the funds required to settle the auction price through the loan. Due to the unlawful decision, however, the auction was invalid and the Plaintiff could not proceed with the sale. Furthermore, during the time the proceedings regarding the invalidity of the auction were ongoing, the Plaintiff did not have access to the funds, as they were held by the insolvency trustee. As a result of the unlawful decision, the Plaintiff could not fulfill his obligations and repay the loan properly and on time. The Plaintiff's actions were not deemed imprudent; it cannot be concluded that he violated the general duty of care in the sense that he did not act sufficiently cautiously when entering into the loan agreement, as the specific circumstances outlined do not suggest this (the agreement was concluded only after the future purchase agreement was made and after the auction took place). The Plaintiff could not have anticipated that he could suffer damages or that he would be penalized for failing to meet the agreed obligations due to the unlawful decision. Hence, the court did not find contributory negligence on the part of the Plaintiff in the occurrence of the damage. If the unlawful decision had not been issued, the Plaintiff would not have incurred any damages, as he would have properly acquired the property and could have sold it according to his intentions (or even to another buyer if the future purchase agreement had since expired) and received the purchase price, which he would have used to repay the loan, or he would have had the financial resources obtained from the loan that he could return. The delay in repaying the loan and its interest would not have occurred. Therefore, the main cause of the Plaintiff's damages can be found in the unlawful decision of the court, as the damages could not have arisen independently merely from the Plaintiff entering into the loan agreement; instead, they were an inexorable consequence of such a decision during the period from February 1, 2014 (the commencement of the delay regarding the repayment of the loan) until January 31, 2017 (when the proceedings to determine the invalidity of the auction were still ongoing). The Plaintiff had no resources available to mitigate these adverse effects of delay in the form of accumulating loan interest and statutory late fees, and he was obligated to cover them. Initially, the Plaintiff paid the overdue interest on the loan himself, and subsequently, the creditor assigned a part of the claim from the loan agreement, and the new creditor decided to enforce its fulfillment through enforcement proceedings conducted against the assets of the Zach spouses. It was the right of the creditor to choose which co-debtor it would demand payment from. Given the internal arrangements of the co-debtors, where the financial resources from the loan were used exclusively by the Plaintiff to pursue his intention of acquiring the property in the auction, the Plaintiff does not have the option of seeking reimbursement from the others. While the Plaintiff became a participant in the enforcement proceedings because he failed to adequately fulfill his obligation under the

loan agreement, the reason for his non-fulfillment must be seen in the unlawful decision that prevented him from meeting his obligations.

34. Regarding the terms of the credit agreement in question, it is true that the defendant had no influence over the conditions under which the plaintiff took out the loan; however, the court considers the executed contract to be a valid legal act, the terms of which are not unconventional. The credit agreement was concluded between non-banking entities, and the loan amounting to 4,000,000 CZK was to be repaid within 9 months from the date of disbursement, along with an interest rate of 1.5% per month (i.e., 18% per annum). Given that the interest rate at the time of the loan's provision by banking institutions was 14.63% per annum, the agreed-upon rate from the non-banking entity does not contravene good morals, considering that a rate would only be deemed excessive if it were to reach up to three times the average interest rate at which banks offer loans during the relevant period and location (Supreme Court, file No. 21 Cdo 1484/2005, 33 Odo 234/2005). Furthermore, the agreed-upon short-term contractual penalty of 0.3% per day for the period from February 1, 2014, to December 31, 2014, is still permissible and reasonable (Supreme Court, file No. 33 Cdo 772/2010, 33 Cdo 1682/2007), although the plaintiff does not claim it. The non-banking sector and the short-term nature of the loan may justify the provision of financial resources under such different conditions compared to the banking sector.
35. With respect to the amount of damages, it was established that the plaintiff paid the creditor all capitalized interest from the loan at a rate of 1.5% per month (60,000 CZK) on the sum of 4,000,000 CZK for the period from February 1, 2014, to January 31, 2017, which he would not have had to pay had it not been for the unlawful decision rendered, resulting in a total damage of 2,160,000 CZK. The plaintiff claims only a portion of this amount, specifically 1,500,000 CZK, and his claim for compensation is justified; therefore, the court granted the claim to this extent in its Order I.
36. Regarding the claim for the amount of 826,444.38 CZK for capitalized interest on arrears for the period from February 1, 2014, to October 20, 2016, it was demonstrated that in the enforcement proceedings conducted by Mgr. Martina Havlová under file No. 183 EX 526/17, an amount of 875,307.79 CZK was recovered for the benefit of the entitled party as capitalized interest on arrears for the aforementioned period, which would not have had to be paid had it not been for the unlawful decision rendered, thereby causing the plaintiff damage in this respect. The plaintiff claims only a portion of this amount, specifically 826,444.38 CZK, calculated as of June 15, 2020; his claim for compensation is justified, and therefore the court granted the claim to this extent in its Order II.
37. Regarding the claim for the amount of 206,946.30 CZK for costs incurred in the enforcement proceedings conducted by Mgr. Martina Havlová under file No. 183 EX 526/17, it was established that the enforcement was initiated not only to recover the interest on arrears, which the court awarded to the plaintiff in Order II of this judgment, but also to recover the principal of the loan, contractual penalties, and contractual interest up to January 31, 2014, and that the enforcement was completed with full recovery. As the defendant cannot be held accountable for the retention of the loan principal by the insolvency administrator, and claims related to this matter are being resolved by the plaintiff in another court proceeding, the plaintiff can only be awarded that part of the reimbursement for enforcement costs that arose in causal connection with the recovery of the amount of 875,307.79 CZK in capitalized interest on arrears for the period from February 1, 2014, to October 20, 2016, as this claim could have been pursued in enforcement proceedings separately and would have been satisfied prior to the execution of sales of real estate (up to March 3, 2020). Otherwise, there might be a situation where the reimbursement for

enforcement costs would be awarded to the plaintiff twice in different proceedings. Of this amount, the fee for the judicial enforcement officer is 131,296.20 CZK, the lump-sum reimbursement of expended costs is 3,500 CZK, and 21% VAT amounts to 28,307.20 CZK under Section 6(1) and Section 13(1) of Decree No. 330/2001 Coll. The court therefore found the plaintiff's claim in Order III justified to the extent of the amount of 163,103.40 CZK, rejecting the remaining portion of the claim in Order IV.

38. The ruling V. regarding the costs of the proceedings is justified in accordance with the provisions of Section 142(3) of the Civil Procedure Code, which stipulates that even if a party is only partially successful in the matter, the court may award them full reimbursement of the costs of the proceedings if the unsuccessful part is relatively minor. The plaintiff suffered an unsuccessful outcome only to the extent of 1.7%; therefore, the court awarded them full reimbursement of the costs of the proceedings. The reimbursement of costs includes the paid court fee of 2,000 CZK, the lawyer's fee in accordance with Section 7 point 6 and Section 11(1)(a), (d), (g) of the Attorney's Tariff for 9 professional service acts amounting to 326,700 CZK, each being 36,300 CZK (tariff value of 6,998,614.30 CZK; acceptance and preparation of representation, submission of the claim, supplementing the claim in response to the court's request dated June 27, 2019, including supplements and July 31, 2020, appeal dated January 12, 2021, including supplements, attendance at hearings on July 20, 2020, October 5, 2020, November 30, 2020, May 20, 2021), for 5 professional service acts amounting to 92,300 CZK, each being 18,460 CZK (tariff value of 2,533,390.68 CZK; statement on the matter dated August 26, 2021, including supplements, attendance at hearings on August 25, 2021, October 27, 2021, March 21, 2022, and April 27, 2022), flat-rate compensation for expenses amounting to 4,200 CZK in accordance with Section 13(1), 4 of the Attorney's Tariff for 14 professional service acts, each being 300 CZK, and 21% VAT amounting to 88,872 CZK. Therefore, the total reimbursement of the costs of the proceedings amounts to 514,072 CZK, which the court ordered the unsuccessful defendant to pay to the plaintiff's legal representative as per Section 149(1) of the Civil Procedure Code.
39. The deadline for performance was determined according to Section 160(1), the part of the sentence after the semicolon of the Civil Procedure Code; the extended statutory deadline corresponds to the conditions for drawing financial resources from the state budget, governed by Act No. 218/2000 Coll., on budgetary rules, which the defendant follows when making monetary payments. Additionally, the court is unaware of any circumstances that would justify believing that establishing a longer deadline for performance compared to the statutory three-day period could cause any harm to the plaintiff.

Instruction:

An appeal against this judgment may be filed within 15 days from the date of delivery of a copy of its written version to the Municipal Court in Prague, through the local court. If the obliged party fails to voluntarily comply with the enforceable decision, the entitled party may submit a proposal for judicial enforcement of the decision or a proposal for execution.

Prague, May 6, 2022

Mgr. Irena Městecká, sign.
Judge

Date of effect: This judgement is an effective verdict as of the 4th of November 2022