

ALERT

DIAS CARNEIRO
ADVOGADOS



JUSTICE REAFFIRMS
FIDUCIARY
CREDITOR'S RIGHTS
OVER PROPERTY
IN RESTRUCTURING





State Court of Appeals of Mato Grosso decides that the recognition of the essentiality of real estate security under fiduciary assignment, within the scope of a judicial reorganization proceeding, does not prevent the consolidation of fiduciary property by the fiduciary creditor

On November 11, 2024, the State Court of Appeals of Mato Grosso, issued decision partially granting an appeal filed by client represented by our law firm (case files n. 1021321-57.2024.8.11.0000), recognizing that "[t]he declaration of essentiality of the fiduciary guarantee does not prevent the continued consolidation of the property; it only stays acts tending to its sale and keeps the debtor under reorganization in possession until the end of the period described in §4 of the art. 6 of Law no. 11.101/2005 (stay period)".

The ruling was handed down in the context of the judicial reorganization proceeding of a rural producer, before the Court of the city Sinop/MT, in which we represent a client holding fiduciary assignment of rural real estate. Initially, the judicial reorganization court had considered the real estate as essential for the rural producer's activities, and, as a result, it ordered the foreclosure proceeding of the guarantee to be suspended.

However, after filing an appeal, the Court of Appeals recognized that the mere declaration of essentiality does not prevent the consolidation of ownership of the asset, but only acts of effective sale of the asset, so that "the recovering party remains in possession [of the asset] during the stay period, since during this period of time any act of disposal is prohibited, whether directly or by auction (art. 6, §4, of Law 11,101/2005)".



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This decision can be considered an advance in our case law, since it guarantees the fiduciary creditor the right to consolidate the property of its guarantee and, as soon as the stay period ends, carry out the other acts of sale of the security.

It is worth mentioning that we had already discussed this possibility, in a recent article authored by our partner Laura Bumachar and counsel Bruno Gozzi, published in Valor Econômico on April 24, 2024 (available at <https://valor.globo.com/legislacao/coluna/recuperacao-de-produtor-rural-e-seguranca-juridica.ghtml>)



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