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Building Projects Over Strong Relationships

LEGAL ALERT - Supreme Court strengthens buyer protection and contractual good faith

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Judgment of the Portuguese Supreme Court of Justice (STJ) of 17 September 2026, Case No. 2103/20.6T8ALM.L1.S1

Can the buyer of a property sold as free of liens and encumbrances claim compensation for the loss of use and enjoyment of the property under the general rules of contractual liability, even without first resorting to the specific remedies for the sale of encumbered assets set out in Articles 905 to 912 of the Portuguese Civil Code?

The STJ ruled that they can!

According to the STJ, transferring a property as free of liens and encumbrances, when there is an existing lease that was concealed from the buyer, amounts to defective performance and may entitle the buyer to compensation for the loss of use and enjoyment of the property.

The seller breaches not only the main obligation undertaken, but also the duties of disclosure, loyalty and good faith.

The buyer may claim compensation for the damage arising from the loss of use and enjoyment of the property under the general rules of contractual liability, even without first resorting to the specific remedies provided for the sale of encumbered assets.

The special regime of Articles 905 to 912 of the Civil Code therefore does not exclude the general rules of Articles 762 and 798 of the same Code where the damage at stake is autonomous and not specifically governed by that regime.

Interplay between the special regime and the general rules on breach of contract

The STJ began by analysing Articles 905 to 912 of the Civil Code, which govern the sale of encumbered assets, and held that this special regime prevails over the general rules only on the matters it specifically regulates. In other words, the existence of a special regime does not automatically exclude the general rules of contractual liability.

Accordingly, wherever the damage at stake is not specifically governed by the regime for the sale of encumbered assets, the general rules on breach of contract continue to apply.

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Defective performance of the contract

The STJ found that the sellers had undertaken to transfer a property free of liens and encumbrances.

However, they transferred a property subject to a valid and effective lease whose existence had not been disclosed to the buyer. As a result, the performance rendered did not match the performance contractually owed, which amounts to defective performance of the obligation.

The Court further held that this conduct breached the duties of disclosure, loyalty, cooperation and good faith that must govern contractual relationships.

Right to compensation for loss of use and enjoyment of the property

The STJ held that the buyer suffered autonomous damage, consisting of being unable to use the property and obtain its normal economic benefits while it remained occupied by the tenants.

This loss is distinct from the damage specifically governed by the regime for the sale of encumbered assets.

For this reason, the buyer was not necessarily required to resort to the remedies in Articles 905 to 912 of the Civil Code in order to claim this compensation.

The STJ held that the loss of use and enjoyment of the property is autonomous, compensable damage, and that compensation may correspond to the property's rental value for the period during which the buyer was deprived of it.

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Liability of the sellers

The STJ also found that the requirements for contractual liability were met. Even if one of the sellers was unaware of the lease, that circumstance was not enough to exclude their liability.

As a party to the transaction, the seller had a duty to verify the legal status of the property being transferred, so the sellers' liability could not be excluded on the grounds that they may have been unaware of the situation.

This judgment is particularly important because it strengthens buyer protection and the application of the principle of contractual good faith, preventing sellers from escaping liability for the losses caused simply because the buyer did not use the specific remedies for the sale of encumbered assets.

- Sara Serralha Alves

How MATLAW can help

Did you buy a property presented as free of liens and encumbrances, only to discover a lease that was never disclosed to you? Or are you preparing a sale and want to make sure you meet all your disclosure duties towards the buyer?

MATLAW' team will review your case, assess the recoverable damages and support you in defending your rights.

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