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LEGAL ALERT - Supreme Court upholds compensation for the sale of a leased property without the buyer's knowledge

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LEGAL ALERT - Supreme Court upholds compensation for sale of leased property

In a judgment of 17 September 2026, the Portuguese Supreme Court of Justice (STJ) clarified the rules that apply when a property is sold as free of liens and encumbrances but turns out to be encumbered without the buyer's knowledge.

1. Background

The dispute arose from the purchase of an apartment intended as the buyer's own home.

Although the public deed stated that the property was transferred free of liens and encumbrances, it later emerged that it was occupied under a lease that was still in force. The occupation only ended several years later.

In these circumstances, the buyer sought compensation for the losses suffered as a result of being deprived of the use and enjoyment of the property.

2. The decision

The Court began by clarifying that the regime governing the sale of encumbered assets is not a closed, self-contained system. In the Court's view, that regime prevails only on the matters it specifically regulates, while the general rules on breach of contract continue to apply to damage it does not specifically address.

Against this background, the Court held that transferring a property as free of liens and encumbrances, when it is in fact subject to an existing lease, amounts to defective performance.

It further held that failing to disclose this situation breaches the duties of disclosure, loyalty and good faith owed by the seller, which also grounds the seller's liability for the losses caused to the buyer.

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3. Compensation for loss of use of the property

One of the most relevant aspects of the decision is the recognition of the loss of use and enjoyment of the property as a separate head of damage.

The buyer only sought compensation for the period during which they were unable to exercise the rights of use and enjoyment inherent in ownership.

The Court held that this loss is autonomous damage not specifically governed by the regime for the sale of encumbered assets, so the buyer may be compensated under the general rules of contractual liability. The Court also accepted that compensation may correspond to the property's rental value for the period during which the owner was unable to use it.

4. Practical implications

This decision underlines the importance of the seller's statements about the legal status of the property.

Whenever a property is transferred as free of liens and encumbrances and turns out to be subject to relevant legal restrictions unknown to the buyer, the seller's liability may not be limited to the specific remedies for the sale of encumbered assets, and may also cover damage arising from breach of contract.

The decision also highlights the importance of proper legal due diligence and of clearly defined seller representations and warranties on the property's legal, occupancy and tenancy status. Many of these situations can be anticipated and addressed at the promissory purchase agreement stage, significantly reducing the risk of future disputes.

- Salomé Silvestre

How MATLAW can help

Buying or selling a property? MATLAW supports legal due diligence and the drafting of seller representations and warranties, from the promissory agreement to the final deed.

If you have acquired a property that did not match what you were told, we will review your case and defend your rights.

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