

The conditions precedent inserted in a *compromis de vente* pertaining to the sale of a real estate property are the law of the parties in case of difficulty at the time of the sale

Pursuant to Article 1134 of the French Civil Code, agreements lawfully entered into have the force of law for those who have made them.

They may be revoked only by mutual consent, or for causes authorized by law.

The signature of a *compromis de vente*, i.e. a preliminary sale agreement, also referred to as a synallagmatic promise of sale agreement, formalizes the parties' consent to the transfer of a real estate property and allows the parties to request in court the forced implementation of the sale.

Yet, conditions precedent are often inserted in the *compromis de vente* in order to condition the completion of the sale to the occurrence of certain pre-defined events.

In a decision handed down on May 29, 2013 (appeal n° 12-17077), the 3rd Civil Chamber of the *Cour de Cassation* (French supreme Court) has specified what should be the status of the *compromis de vente* when a condition precedent inserted therein is not fulfilled at the contractually agreed date.

Since the adoption of Decree n°55-22 of January 4, 1955 relating to the reform of land registration formalities, public notaries have a monopoly for making registrations to the Land Registry that centralizes all legal alterations/changes affecting a real estate property.

Consequently, most of the *compromis de vente* pertaining to land, houses, flats, etc. - and that must be entered into before the final completion of the sale - are drawn up by these public officers.

In order to grant a further protection to buyers, the French legislator has imposed the obligation to insert in the *compromis de vente* conditions precedent to the final conclusion of the sale, such as for instance the grant

of a housing loan for the acquisition of residential real estate properties (cf. Articles L312-2 et seq. of the French Consumer Code).

In practice, the public notary inserts in the *compromis de vente* one or several conditions precedent that vary according to the type of real estate property and the will of the parties. The notary public also sets a date for the signature of the final notarized deed of sale.

According to an established case-law, the non-fulfillment of the event(s) referred to in any of the conditions precedent within the contractually agreed timeline entails the nullity of the *compromis de vente*. In this scenario, any seller who has been summoned before the court by the buyer seeking the forced signature of the final notarized deed of sale^[1] is entitled to request the court to order the nullification of the *compromis de vente*.

Yet, difficulties still remained in case of conditions precedent concerning specifically the signature of the final notarized deed of sale.

Indeed, such a clause, if not sufficiently clear and precise, could enable either party to the *compromis de vente* to seek the forced sale of the property.

The issue at stake was as follows: Is the date set for the signature of the final notarized deed of sale mandatory and, therefore, should the *compromis de vente* be nullified if the signature of the final notarized deed of sale is requested after such date? Or, on the contrary, is it only a date from which either party may request the other to perform his contractual obligations under the *compromis de vente*?

The *Cour de Cassation* has answered these questions based on the terms used in the relevant condition precedent and the common intention of the parties.

As such, the expiry of the deadline agreed for the occurrence of the event, will not entail the nullification of the *compromis de vente* if the set date can be automatically extended, as determined by the *Cour de Cassation* that highlighted the specificity of the contentious clause in the commented decision: “*the sale shall be completed by way of a notarized deed of sale(...) by December 31, 2004 at the latest (...) unless this date is extended in order for the notary in charge of the preparation of the deed of sale to obtain the last required exhibit*”^[2].

On the other hand, when the *compromis de vente* includes a date for the signature of the notarized deed of sale without any further indication, the extension of this deadline is subject to the express consent of both parties. If the seller does not respond to a request by the purchaser to extend the deadline, the *compromis de vente* can still be declared null and void as soon as the deadline for the signature of the final deed of sale has passed. Consequently, in this case, the court may not order the forced signature of the final notarized deed of sale^[3].

In conclusion, a particular attention must be paid to the terms used in the conditions precedent set forth in a

compromis de vente in order to avoid being “trapped” in a contract that would turn out to be a bad economic transaction for the seller or the buyer. It is, therefore, highly recommended to have the *compromis de vente* reviewed by a lawyer prior to its signature.

[1] 3rd Civil Chamber of the *Cour de Cassation*, July 13, 1999 appeal n° 97-20110.

[2] 3rd Civil Chamber of the *Cour de Cassation*, November 21, 2012, appeal n° 11-23382.

[3] 3rd Civil Chamber of the *Cour de Cassation*, May 29, 2013, appeal n° 12-17077.

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