

Communication concerning the decision of the Curia of Hungary
in civil case n° Pfv.I.21.276/2016

The plaintiff – a business entity that concluded a sales contract to purchase a real estate – requested the court to delete a number of land registry entries that testified the previous sale of the real estate to the first eight defendants with the maintenance of the seller's property rights primarily on the grounds that the sales contracts concluded in favour of the first eight defendants had been terminated by the liquidator of the seller, the ninth defendant to the proceedings, which resulted in the termination of the sales contracts and the loss of purpose of the aforementioned land registry entries. Secondly, the plaintiff requested the court, on the basis of section 5, subsection (3) of the former Civil Code, to make up for the absence of the legal statements of the first eight defendants in order to delete the impugned entries. The plaintiff argued that these entries prevented him from registering his property rights acquired through a sales contract.

The first eight defendants motioned for the rejection of the plaintiff's claims and argued that the plaintiff had promised them to reimburse the sales price instalments paid by them in return for the deletion of the entries, but he did not keep this promise.

The court of first instance rejected the plaintiff's claims. The court of second instance upheld the first instance judgement. According to the reasoning of the final judgement, the termination of the sales contracts by the liquidator of the ninth defendant, in the light of its content, qualifies as a withdrawal from the contracts that, by virtue of section 47, subsection (1) of the Bankruptcy and Liquidation Proceedings Act, could not have been carried out with regard to the performances in instalments of the first eight defendants. The court of second instance emphasised that it had been shown that an agreement had been concluded in connection with the plaintiff's sales contract to settle the outstanding claims of the first eight defendants, however, the agreement's exact content could not be clarified. Since the sales contracts are still valid and in effect, the court is not entitled to make up for the absence of the legal statements of the first eight defendants.

The plaintiff submitted a petition for judicial review against the final judgement and argued that the provisions of the Bankruptcy and Liquidation Proceedings Act have a special legal status in comparison with the rules of the Civil Code, hence, the former prevail over the latter, in addition, the Bankruptcy and Liquidation Proceedings Act enables the liquidator to terminate a contract even if the contract or any piece of legislation excludes the possibility of termination. The court is not entitled to "pick and choose": it cannot rule out the right to terminate on the basis of the Civil Code and the right to withdraw based on the Bankruptcy and Liquidation Proceedings Act. The plaintiff also explained that the sales contracts of the first eight defendants had become impossible to comply with having regard to the bankruptcy proceedings against the ninth defendant and to the sales contract concluded by the latter, which resulted in the termination of the contract.

The Curia upheld the final judgement and reasoned that the Civil Code determines the legal framework of unilateral legal statements that lead to the termination of contracts (withdrawal, termination), and this general framework cannot be vitiated by any specific legal provisions (in the present case: the Bankruptcy and Liquidation Proceedings Act). According to the Civil Code, only contracts of a lasting nature can be terminated, since termination bears a *pro futuro* effect on them. The sales contract in the present case, however, can be fulfilled by a single act of performance, therefore it may be terminated only by way of withdrawal, which is excluded, by virtue of the Bankruptcy and Liquidation Proceedings Act, due to the buyers' performances in instalments. With regard to the above, the lower instance courts correctly held that the sales contracts of the first eight defendants had not been terminated. The Curia also pointed out that, according to the facts of the case, an agreement had been concluded to settle the contractual interests of the first eight defendants, from which the plaintiff cannot deviate unilaterally and because of which the plaintiff is not entitled to request the court to apply the legal rules on the impossibility to comply with a contractual obligation.

Budapest, the 31st of May 2017

Civil Department of the Curia of Hungary