

Communication concerning the decision of the Curia of Hungary
in the civil case n° Pfv.V.20.343/2012/7

Under the terms of their sales contract concluded on 10 September 2005, the defendant agreed to sell a 108/242nd proportion of its real estate property to the first plaintiff and a 13/242nd proportion of its real estate property to the second plaintiff. In the autumn of 2005, after entering into possession of the real estate, the first plaintiff noticed that the floor in one of the house's rooms bulged up due to soil moisture and mould. In addition, some of the roof tiles were damaged, while the roof-beams consisted of rotten and worm-eaten wood.

In their initial claim, the plaintiffs, referring to the defendant's defective performance, requested the court to oblige the defendant to pay them an amount of 2 690 947,- HUF, the equivalent of the price reduction demanded by them. Four and a half years later, the plaintiffs modified their claim and requested the court, primarily, to oblige the defendant, on the basis of their *restitutio in integrum* claim, to pay them back an amount of 12 100 000,- HUF, the equivalent of the full price previously paid to the defendant, secondarily, to oblige the defendant to pay them an amount of 2 690 947,- HUF, the equivalent of the price reduction demanded by them. The defendant submitted a counter-claim and motioned for the court to dismiss the plaintiffs' claim by arguing that the sales contract had been properly performed.

In its judgement, the first instance court obliged the defendant to pay an amount of 100 020,- HUF with interest and charges to the plaintiffs, while it dismissed the remainder of the plaintiffs' claim. The second instance court partially altered the decision of the first instance court, and raised the amount payable by the defendant to 1 060 212,- HUF with interest and charges. The second instance court reasoned that the plaintiffs' *restitutio in integrum* claim could not be justified, but their secondary claim was well-founded, thus the defendant had to agree to a price reduction.

The plaintiffs submitted a petition for judicial review against the final decision to the Curia of Hungary which found on the basis of the available expert opinions that the real estate acquired by the plaintiffs had been defective at the time of completion of the sales contract, but it had still remained suitable for housing. By the time of the notification of the plaintiffs' *restitutio in integrum* claim, the building had got into a significantly deteriorated condition, since the plaintiffs had not fulfilled their maintenance obligations. With regard to the above, the Curia was called upon to decide in this case of theoretical importance whether it would be justified to order restitution by virtue of Article 306, paragraph (1), point b) of the Civil Code in the event that, due to their lack of proper care, the plaintiffs could return the real estate only in a substantially degraded condition.

The Curia addressed the above theoretical issue and established that persons seeking to exercise their warranty rights should meet not only the conditions laid down in Article 306 of the Civil Code, but the requirements defined in Article 4, paragraph (1) of the Civil Code as well. Pursuant to the relevant provisions of the latter Article, in the course of exercising warranty rights, the interested parties shall act in good faith and with mutual respect, and they shall be obliged to co-operate with one another. Consequently, persons seeking to exercise their warranty rights shall not be entitled to choose – from among the different types of warranty claims provided for by the Civil Code – a warranty claim which may result, in comparison with the other claims, in an unfair disadvantage or a disproportionate volume of additional costs to the detriment of the obligor.

Since, due to their lack of proper care, the plaintiffs could return the real estate only in a substantially degraded condition, the Curia esteemed that the plaintiffs' primary, *restitutio in integrum* claim was ill-founded, and upheld the final decision which had accepted the plaintiffs' secondary claim and had obliged the defendant to agree to a price reduction.

Budapest, the 15th of January 2013

Civil Department of the Curia of Hungary