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Liability of Credit Institutions Allowing Homebuyers to Pay Funds Other Than Into a Special Insured Account Set Up By the Developer

Ruling 733/2015, of Courtroom One of the Supreme Court, dated 21 December 2015.

The Supreme Court has established a new legal doctrine on the liability of credit institutions that allows funds to be paid into home developers' accounts without requiring the developer to open a special insured account.

In this case, the buyer of a home under construction filed a motion of withdrawal for breach of contract in regard to a home being built by a developer, as well as breach of the fundamental right to personal dignity as a consumer of the home under construction, as a result of the reimbursement of the amounts paid in advance not being guaranteed, and also claiming the reimbursement of the amounts paid pursuant to price plus applicable legal interest.

The Court of First Instance partially upheld the lawsuit, and jointly and severally ruled against the developer and credit institution funding the construction, where the various buyers made the advanced payments into the developer's account.

However, the bank appealed the sentence, alleging its lack of standing to be sued and arguing that the insurance obligation corresponds to the developer, who should also have opened the special account for that purpose. The Provincial Court accepted the bank's appeal, considering that the obligation of guaranteeing the reimbursement of these advance payments was a matter solely for the developer.

An appeal against the Provincial Court's ruling was filed in the Supreme Court, which confirmed the ruling of first instance based on the following grounds:

"The matter at debate in this case is whether the credit institution must respond to the buyer making advance payments even though the developer has failed to open a special account at said institution and has failed to present a guarantee or insurance in this connection.

"In accordance with the repealed Law 7/1968 on the receipt of advance payments in the construction and sale of homes, developers must receive advance payments "via a bank or savings bank, in which such payments must be deposited in a special account, separate from any other kind of funds belonging to the developer, to be accessed only in connection with the construction requirements of the homes. To open these accounts, the bank or savings bank, at its own responsibility, shall require the aforementioned guarantee" (guarantee or insurance).

"Accordingly, the Court focuses on the interpretation of "at its own responsibility". Based on existing case law, the Court understands that credit institutions are not external third-parties in the relationship between buyer and seller, but that they have a duty of vigilance in respect of the developer to whom they have granted the loan; in other words, it is their duty to ensure that the developer has arranged the guarantee or insurance.

"The Court also specifies that, precisely because the credit institution knew or should have known that the buyers were paying advances into the account, it was legally bound to open a special, separate, properly guaranteed account, and by not doing so it incurred in the specific liability indicated above.

"As a result, the Court establishes the following legal doctrine: "In home sale-purchase operations governed by law 57/1968, credit institutions allowing payments from buyers into a developer account without requiring that a special, insured account be opened, shall respond to the buyers for the entire amount advanced by the buyers and paid into the account or accounts held by the developer at said institution.""