

Conditions governing the admissibility of a motion to dismiss based on estoppel

Laid down by the Plenary Assembly of the *Cour de Cassation* in February 2009^[1], the principle of estoppel ensures a consistency in litigants' discussions before a court of law as it prohibits a party to contradict itself at the expense of others.

Since the beginning of the year 2018, the *Cour de Cassation* has delivered no less than seven decisions that further specify the nature and the scope of this principle under French law.

Based on the numerous decisions rendered by the *Cour de Cassation*, the conditions for implementing the principle according to which “no one may contradict himself/herself at the expense of others” appear quite strict.

The *Cour de Cassation* has clarified in particular that:

- Estoppel could only be upheld in case of a change of legal position which is likely to mislead the other party on one's intentions^[2].
- Estoppel requires that the claims of the party against whom the estoppel is being raised mislead the opponent on the intentions of that party^[3].
- A party does not contradict itself wherever it raises incompatible pleas in legal proceedings conducted respectively in France and in the USA^[4].
- On appeal, the parties may raise new pleas without contradicting themselves at the expenses of

others^[5].

- Contrary allegations made during previous proceedings must not be considered by the trial judge insofar as the parties have not changed their claims during the ongoing proceedings^[6].

In six decisions handed down on March 15, 2018, the Second Civil Chamber of the *Cour de Cassation* further specified that estoppel is a “*a procedural behavior which consists, for a party to adopt, in the course of the same proceedings, contradictory or incompatible stances in conditions that mislead the opponent on said party’s intentions*”^[7]. As such, a motion to dismiss based on estoppel was rejected because the plaintiff did not fall into contradictions during the course of the then ongoing proceedings.

In a decision dated June 28, 2018, the Third Civil Chamber of the *Cour de Cassation* specified that estoppel was only admissible if there has been “*a contradiction at the expense of others during the discussions [between the litigants] before the court*”^[8].

In the matter at hand, the dispute was between a co-owner and an association of co-owners. The co-owner sought the nullification of the decision of the general meeting of co-owners during which the decision had been made to eliminate the janitor’s position. The co-owner had voted against this resolution but also against ancillary resolutions that concerned the recruitment of a new person to hold this position. The association of co-owners considered that the co-owner, by voting so, had unambiguously expressed his intention not to maintain this employment position and was not, therefore, entitled to seek the nullification of the decision of the general meeting of co-owners.

The *Cour de Cassation* refused to apply estoppel because no contradiction had been identified during the discussions before the trial judges. The claims of the parties, whether they are brought before or after proceedings, do not fall within the scope of estoppel.

An analysis of all the decisions referred to herein clearly shows that the principle of estoppel cannot be reduced to an issue of contradiction alone. Estoppel also sanctions a lack of loyalty between the parties during the discussions before the courts. Quite logically, the *Cour de Cassation* specified that this principle can only apply to contradictions that occur in the course of the same proceedings.

^[1] Plenary Assembly of the *Cour de Cassation*, February 27, 2009, n° 07-19.841

^[2] First Civil Chamber of the *Cour de Cassation*, February 3, 2010, n°08-21.288

^[3] First Civil Chamber of the *Cour de Cassation*, September 24, 2014, n°13-14.534

^[4] First Civil Chamber of the *Cour de Cassation*, September 24, 2014, n° 13-28.262

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[5] Commercial Chamber of the *Cour de Cassation*, February 10, 2015, n°13-28.262

[6] Second Civil Chamber of the *Cour de Cassation*, June 22, 2017, n° 15-29.202

[7] Second Civil Chamber of the *Cour de Cassation*, March 15, 2018, n°17-21-991, n° 17-21-992, n° 17-21-993, n° 17-21-994, n° 17-21-997 and n° 17-21-998

[8] Third Civil Chamber of the *Cour de Cassation*, June 28, 2018, n°17-16.693

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