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Latent defects: Purchaser has no right to claim for the cancellation of the sale if he has been sluggish in initiating legal proceedings

The warranty against latent defects is a legal obligation imposed on the seller of a real estate property in order to protect the purchaser.

When a latent defect is identified on a sold property and insofar as three cumulative requirements are met, the purchaser had so far the option to request either the cancellation of the sale (so called action rédhibitoire) or a reduction of the purchase price (so-called action estimatoire).

In a decision dated June 25, 2014, the Cour de Cassation (French Supreme Court) seems to now deny the purchaser the right to request the cancellation of the sale if he has been sluggish in initiating proceedings to enforce the warranty against latent defects.

The warranty against latent defects can be enforced if three requirements are met:

- The defect must be inherent (or intrinsic) to the thing and must exist before the sale.
- The defect must render the thing unfit for its intended use.
- The defect must also be latent, i.e. unnoticeable by the purchaser during a standard audit and assessed on the basis of the state and condition of the thing (i.e. new or second-hand thing).

Wherever these three requirements are met, Article 1644 of the French Civil Code grants to the purchaser of a thing affected by latent defects the possibility to choose between (i) the return of the thing and the repayment of the purchase price, or (ii) the retention of the thing and a reduction of the purchase price.

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It should be noted, however, that any legal action for the enforcement of the warranty against latent defects must be initiated within two years as from the discovery of the defect(s), failing which, such action is time-barred.

Pursuant to an established case-law, the purchaser's choice between the return of the thing and the reduction of the purchase price was traditionally free, i.e. the purchaser had no obligation to explain and justify his choice to the seller or the courts.

The only limits in this option granted to the purchaser by French law were material in nature. The loss of the thing or the impossibility to return it, were, for examples, an impediment to the cancellation of the sale.

In its decision of June 25, 2014, the Cour de Cassation upheld the judgment of the appellate judges who had dismissed a purchaser's primary request to cancel the sale but granted his alternative request for damages.

As such, the purchaser of the thing affected by latent defects has been deprived of his right to choose between an action rédhibitoire (cancellation of the sale) and an action estimatoire (reduction of the purchase price).

This innovative stand adopted by the judges of the Cour de Cassation can be explained by the fact that the purchaser had been sluggish in initiating legal proceedings to enforce the warranty against latent defects.

In this specific instance, the purchaser had neither initiated such proceedings nor performed works to remedy the identified defects. It is the purchaser's successors in title who initiated proceedings against the seller following the death of the purchaser that occurred two years after the closing of the sale.

This decision has been published in the Bulletin of decisions of the Cour de Cassation. We can, therefore, infer that the purchaser's sluggishness in initiating legal proceedings to enforce the warranty against latent defects allows judges to limit the choice under the option granted by Article 1644 of the French Civil Code governing the warranty against latent defects.

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1. 1st Civil Chamber of the Cour de Cassation, May 22, 2008, Bull. civ. I, n°163
 2. 3rd Civil chamber of the Cour de Cassation, June 25, 2014, appeal n°13-17254

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