

Logaras & Associates

**Real Estate
Uncertainty over real estate public
auctions after Supreme Court's
conflicting rulings**

Newsletter
November 2022

Real Estate

Uncertainty over real estate public auctions after Supreme Court's conflicting rulings

The years before Covid-19 pandemic were marked by intense activity in public auctions and enforcement proceedings, a corollary of the sheer number of Non-Performing Loans (NPLs) burdening banks' balance sheets. "Hercules Plan" a government-backed securitization program, - introduced into Greek legislation in December 2019 (L. 4649/2019) - aimed at deloading Greek banks plagued by NPLs.

Nonetheless, the pandemic outbreak and its dire repercussions, led the enforcement proceedings in Greece - including public auctions - in a state of enforced inertia for a long period of time. In particular, the Greek Government to mitigate the implications of the economic recession caused by the healthcare crisis, passed a series of emergency legal provisions

suspending enforcement proceedings and safeguarding the protection of debtors amidst Covid-19 mayhem.

This legislative wave in combination with several unsuccessful auctions that took place within the first 9 months of 2022, forced NPLs management companies ("Servicers") to pursue the acceleration of enforcement proceedings and public auctions.

Nonetheless, servicers' new endeavour is not progressing unhindered due to the very recent jurisprudence of Greece's Supreme Court that has divided both doctrine and case-law.

Supreme Court jurisprudence: A legal headache

In May 2022, the Supreme Court of Greece published decision No. 822/2022 overturning a long-established legal practice and dividing the legal world. In a nutshell, the Court ruled that NPLs Servicers, are not entitled to initiate or conclude enforcement proceedings on behalf of the funds owning the NPLs for claims that have been assigned to them according to the former legal regime of L. 3156/2003. According to the ruling, this authorization is exceptionally granted to NPLs management companies by virtue of the subsequent and currently applicable L. 4354/2015, contrary to L. 3156/2003 which

authorizes Servicers to proceed only with out-of-the-court proceedings and settlements to achieve the satisfaction of the claim.

Decision No. 822/2022 set the legal precedent for debtors to file oppositions and request declaration of invalidity of public tenders that have been imposed by NPLs management companies and involve claims securitized according to the provisions of L. 3156/2003, thus creating a climate of uncertainty and a headache to the legal departments of the Servicers.

The legal turmoil has caused an internal turbulence among NPLs management companies, banks and the Greek Government itself, given that the latter has backed securitizations with 14,8 billion guarantees, currently at risk of being called on.

Conflicting case law

More recent decisions No. 1102/2022 and No. 1343/2022 issued by the Supreme Court in June and July 2022, respectively, came to cloud the landscape even more. The two subsequent decisions establish a conflicting case law, ruling that NPLs Servicers are entitled to initiate or conclude enforcement proceedings on behalf of the funds, even if the claims had been assigned to them by virtue of L. 3156/2003.

The solution to the judicial conundrum

In light of the above, the introduction of a new bill amending the current legal framework clarifying that Servicers are authorized to carry out enforcement proceedings in all instances, including claims transferred under the 2003 regime was on the table. The new provision was going to be retrospectively in force covering enforcement proceedings and public tenders that had already taken place. Nonetheless, the Greek Government had a change of heart, changing course towards a solution with less political cost and deciding that the plenum of the Greek Supreme Court is the one competent to solve the legal conundrum.

Apparently, such a decision comes with trade-offs. May the Government be released by a significant political burden – under the pressure of the forthcoming elections - but the referral of the matter to the plenum of the Greek Supreme Court is a time-consuming procedure entailing significant consequences. While a new bill would solve the issue efficiently and in short time, in favor of the banks, the Servicers and even the Greek

Government itself, which sees the possibility of called on guarantees to near, the referral to the plenum means frozen enforcement proceedings and public auctions for an indefinite period of time. A freezing which may have dire repercussions on the NPLs' matter, taking into consideration the long period of "Covid-caused" enforcement inertia.

Unsuccessful auctions: A mean of downward pressure on initial bid prices

Another thorny issue plaguing NPLs management companies is the huge number of unsuccessful auctions, which can be partly attributed to the lack of information or misinformation circulating among investors and other potential bidders and the non-familiarization of the latter with the auction procedure. Furthermore, the fact that the Greek Procedural Law offers a plethora of remedies aiming at protecting the debtor should not be disregarded. It is common such remedies, though unfounded, to be filed by debtors for them to earn time and delay the proceedings. What's more, due diligence on the properties can be turned into a cumbersome and perilous procedure, when it is not assigned to trustworthy professionals.

Indicatively, until the third quarter of 2022, 25.865 auctions were concluded out of the 39.178 scheduled and only 6.773 properties were awarded.

This development puts a downward pressure on initial bid prices, making auctions even more attracting to investors who enjoy the competitive advantage of being guided by reliable professionals, who are able to point out investment opportunities, take over the auction procedure from A to Z securing the successful award of the property.

As a matter of fact, Greek Procedural and Enforcement law is one of the most labyrinthine practice areas, stipulating several formalities that must be undergone, hence demanding the experience, the know-how and expertise of a reliable law firm.

Need advice?

At Logaras and Associates we have accumulated the experience and the know-how to assist our clients in successfully bidding and being awarded assets, through public auctions. Our team works towards a safe and successful result, by taking over all due diligence, both in terms of enforcement formalities and property - related. Moreover, our

clientele can be benefited by our strong business acumen and our ability to identify business and investment opportunities on our clients' behalf.

For further information and clarifications please contact us at:
k.logaras@logaraslaw.com

Konstantinos Logaras – Katia Zigouliauou

T. +30 210 36 27 222

E. k.logaras@logaraslaw.com

Logaras & Associates

4 Vissarionos Street
Athens, 106 72 Greece
www.logaraslaw.com

© Logaras & Associates (2022). All contents on this website, including logos, trademarks, texts, newsletters and articles (hereinafter the “Contents”), are protected under intellectual property law. Except where otherwise stated, use, downloading, reproduction and distribution in whatever form and by whatever medium (including Internet) for whole or part of the Contents available on this website and newsletter is not authorized.