

IS THE ENFORCEMENT AGENT'S ADDITIONAL REMUNERATION DUE?

Judgement of the Lisbon Court of Appeal

Pending a joint enforcement action for payment of a sum certain totalling more than 7 million euros, the Claimant and the Defendants entered into a payment agreement and requested that the enforcement action be terminated.

As a result, the Enforcement Agent drew up the Expenses and Fees Note and calculated a variable remuneration totalling more than 60,000 euros, plus VAT.

The plaintiff and the defendants considered that there was no room for additional remuneration and therefore complained about the act.

The Court of First Instance passed judgement and concluded that it was “proportionate, fair, appropriate and reasonable to introduce a one-third reduction in the value of the additional remuneration”.

Unsatisfied, the Plaintiff and the Defendants appealed against this decision, on the grounds that the amount claimed by the Enforcement Agent was manifestly disproportionate, in stark contrast to the simplicity of the acts carried out by the Enforcement Agent, and violated the principle of proportionality enshrined in the Constitution of the Republic.

In fact, the Enforcement Agent had done little more than seize the property indicated by the Plaintiff and already mortgaged to guarantee the Plaintiff's claim.

Furthermore, the parties considered that there was no causal link between the steps taken by the Enforcement Agent and the conclusion of the agreement.

The Lisbon Court of Appeal ruled that the Enforcement Agent was not entitled to the additional remuneration of € 60.367,20.

In summary, the Court ruled as follows:

- The additional remuneration of the Enforcement Agent necessarily presupposes the existence of a causal link between the activity concretely carried out by the Enforcement Agent and the extinction of the execution, so that if the extinction of the execution results from a transaction between the parties and this does not result from the concrete intervention of the Enforcement Agent there is no place for the payment of additional remuneration to the Enforcement Agent;
- The activity carried out by the Enforcement Agent is remunerated as «fixed remuneration», thus ensuring payment for the work carried out by the Enforcement Agent in execution.



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