

# JGSA NEWS

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## RELATIONSHIP BETWEEN MORTGAGE AND RURAL LEASE

### THE IMPACT OF SUPREME COURT RULING 14/2024

The recent ruling of the Supreme Court of Justice (STJ) no. 14/2024, published in the "Diário da República", brought a decision of great relevance to the real estate sector in Portugal. The central issue addressed was the following: when the courts sell a mortgaged property, does a rural lease contract entered into after the mortgage remain valid or is it extinguished?

This ruling clarified an issue causing uncertainty for both mortgage lenders and rural tenants. By stating that the sale of the mortgaged property does not cause the rural lease entered into afterward to lapse, the decision reinforces the legal certainty of lessees and redefines the understanding of the impact of foreclosure on these contracts.

### Legal Context and Controversy

Traditionally, interpretative doubt centered on the interaction between two legal provisions:

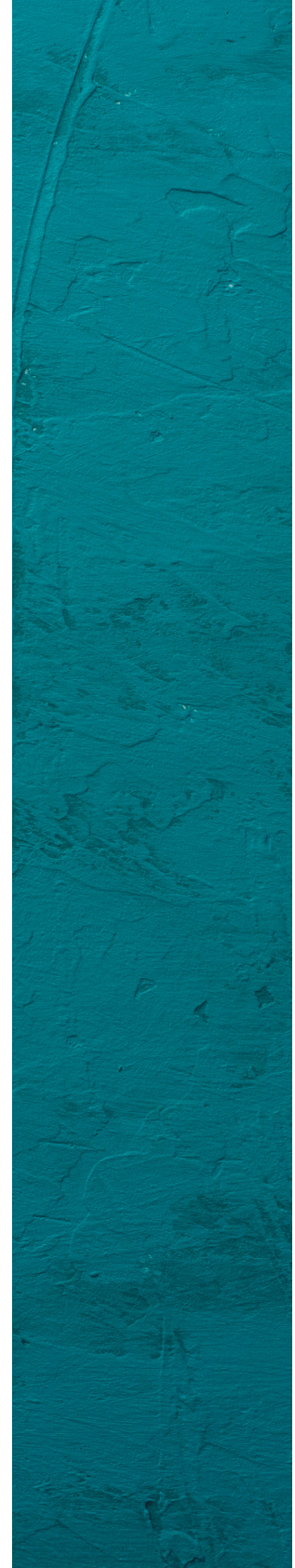
1. Article 824(2) of the Civil Code establishes that, in an enforcement sale, "the assets are transferred free of the guaranteed rights that encumber them, as well as other rights in rem that have not been registered before any seizure, attachment or guarantee (...)"
2. Article 20(1) of the Rural Lease Regime (RAR) states that "the lease does not expire on the death of the landlord or on the transfer of the property"

The conflict arose when the lease was signed after the mortgage. Mortgage creditors argued that the judicial sale extinguished the lease, while tenants maintained that the contract should be maintained. The case law was inconsistent, which created uncertainty in the market.

### Supreme Court decision

The STJ has ruled that a rural lease entered into after the mortgage is not extinguished by the judicial sale of the mortgaged property. According to the court, article 20 of the RAR must prevail in this type of situation, guaranteeing stability and continuity to the rural lease.

This decision unifies case law and offers a new interpretative paradigm for lower courts and market players.



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## Practical implications

### 1. For Mortgage Creditors

Banks and other mortgage lenders should consider that a post-mortgage rural lease may subsist even after the foreclosure sale of the property. This means that:

- The value of the property may be affected, as the new buyer will have to respect the current lease.
- There may be a need for a more careful analysis before a mortgage is granted, ensuring that the risk is properly weighed up.

### 2. For Rural Tenants

The STJ's decision represents a significant strengthening of the rights of rural tenants. In practice:

- It guarantees greater legal certainty for long-term investments in the agricultural sector.

### 3. For Executive Sale Buyers

Purchasers of real estate in foreclosure proceedings should be aware of the possibility that the property may be subject to an existing rural lease agreement, even if entered into after the mortgage. This could have an impact:

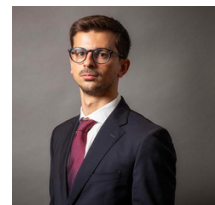
- Free use of the property.
- The market value and investment conditions of the acquired asset.

## Conclusion

STJ Ruling 14/2024 marks a turning point in the interpretation of the relationship between mortgages and rural leases. By deciding that leases should be maintained even after a judicial sale, the court strengthens the protection of tenants and introduces new challenges for creditors and buyers.

This decision requires all parties involved in real estate transactions, from financial institutions to investors, to rethink their strategies and carefully evaluate the implications of leases on foreclosed properties.

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