

The limitation period for the liability against the notary cannot begin to run on the date of reiteration of the sale if the seller was, on that date in a state of psychological subjection

16/09/2021



Ruling from the Third Civil Chamber of 16 September 2021, appeal no. 20-17.623

Summary

The *cour d'appel* (Court of Appeal) which, in order to declare time-barred an action for liability brought against notaries by sellers, holds that the sellers were aware of the damage as from the date of execution of the deed of sale, does not draw the conclusions from its own findings and infringes Article 2234 of the Civil Code, after noting that the sellers were, at the

time of the execution of the deed of sale, in a state of psychological subjection, which meant that the statute of limitations could not have begun on that date

Text of the decision

COUR DE CASSATION (COURT OF CASSATION)

Public hearing of 16 September 2021

Quashing Mr CHAUVIN, President Ruling No. 626 FS-B+C

Appeal No. U 20-17.623

F R E N C H R E P U B L I C

IN THE NAME OF THE FRENCH PEOPLE

Ruling of the Cour de cassation (Court of cassation), Third Civil Chamber, of 16 September 2021

1°/ Mr [F] [T],

2°/ Mr [X] [T],

3°/ Ms [K] [G], spouse of Mr [T],

4°/ Ms [S] [T],

5°/ Mr [H] [T],

all five residing at [Address 1],

have lodged appeal no. U 20-17.623 against the ruling of the *cour d'appel* (Court of Appeal) of Agen (Civil Chamber) of 4 March 2020, in the dispute with:

1°/ Mr [J] [R], residing at [Address 2], Notary,

2°/ Mr [B] [M], residing at [Address 3], Notary, formerly associate notary of the company Balluteaud-Galliai, now called Audhuy-Galliai,

respondents to the quashing.

In support of their appeal, the appellants rely on the single plea for quashing appended to this ruling.

The file has been sent to the Prosecutor-General.

On the report of Ms Abgrall, Judge, the observations of SCP Lyon-Caen et Thiriez, lawyer for Mr and Ms [T], SCP Boré, Salve de Bruneton et Mégret, lawyer for Mr [R] and Mr [M], and the opinion of Ms Vassallo, First Advocate-General, after the arguments at the public hearing of 22 June 2021, at which were present Mr Chauvin, President, Ms Abgrall, Reporting

Judge, Mr Maunand, Elder Judge, Mr Nivôse, Ms Farrenq-Nési, Mr Jacques, Mr Boyer, Judges, Ms Georget, Ms Renard, Ms Djikpa, Mr Zedda, Judge Referees, Ms Vassallo, First Advocate-General, and Ms Berdeaux, Chamber Registrar,

the Third Civil Chamber of the *Cour de cassation* (Court of cassation), composed, pursuant to Article R. 431-5 of the Judicial Code, of the above-mentioned President and Judges, after having deliberated in accordance with the law, has delivered the present ruling.

Facts and procedure

1. According to the ruling under appeal (Agen, 4 March 2020), by act of 8 July 2008 drawn up by Mr [M], with the participation of Mr [R], notaries, Mr [F] [T], Mr [H] [T], Mr [X] [T] and Ms [S] [T] (Mr and Ms [T]) sold a building located on the “Tissandier” plot in Montflanquin to Araneus for the price of EUR 210,000.

2. By final ruling of 4 June 2013, Mr [Q] was sentenced to ten years’ imprisonment for having committed, between 1 January 1999 and 21 October 2009, to the detriment of Mr and Ms [T], fraudulent abuse of the state of ignorance or weakness of victims in a state of psychological or physical subjection resulting from the exercise of serious or repeated pressure or techniques likely to impair their judgment in order to lead them to concluding acts that would be seriously prejudicial to them, in this case, the misappropriation of their savings and the sale of their real estate assets.

3. By act of 9 December 2014, Mr and Ms [T], claiming to have been under the control of Mr [Q] at the time of this sale, initiated legal proceedings against Mr [R] and Mr [M] for payment of damages on the basis of their liability in tort.

For the fourth part of the plea

Statement of plea

4. Mr and Ms [T] objected to the ruling for declaring their action against Mr [R] and Mr [M] inadmissible as time-barred, whereas “the statute of limitations does not begin for a person who is unable to act as a result of an impediment resulting either from the law, from a contract or from force majeure. Its starting point is postponed until he or she can act. The *cour d’appel* (Court of Appeal) held that “the starting point of the statute of limitations provided for in Article 2224 of the Civil Code is therefore 8 July 2008, as decided based on the relevant reasons given by the *tribunal d’instance* (Tribunal of First Instance), which the Court endorses, to end on 8 July 2013” and, by reasons deemed adopted by the *tribunal d’instance* (Tribunal of First Instance), that Mr and Ms [T] “were aware of the damage as at the execution of the deed of sale of the building, i.e. on 8 July 2008”, while considering that Mr and Ms [T] were then under the psychological control of Mr [Q], the judgment recalling in particular that “drawing all the conclusions from the facts retained by the criminal court, this tribunal has already ruled that the state of psychological subjection in which Mr and Ms [T] found themselves qualified them as not being of sound mind. However, this situation of total psychological subjection, which characterises the impossibility of Mr and Ms [T] being able to act, cannot extend beyond the period of the statute of limitations, i.e. from 14 June 2001 to 21 October 2009”. The *cour d’appel* (Court of Appeal) considers that “from 12 December 2009, and a fortiori from June 2011, they can no longer maintain the existence of an insurmountable event characterising a situation of force majeure as required by Article 2234 of the Civil Code”, without the Court investigating, as it was invited to do, whether, in this state, Mr and Ms [T] were not prevented from acting at the time of the sale, so that the statute of limitations could not have begun. In so ruling, the *cour d’appel* (Court of Appeal) deprived its decision of a legal basis under Article 2234 of the Civil Code.”

Court’s response

In view of Article 2234 of the Civil Code:

5. According to this text, the statute of limitations does not begin or is suspended against a person who is unable to act because of an impediment resulting from the law, from a contract or from force majeure.

6. In order to declare the action brought on 9 December 2014 by Mr and Ms [T] to be time-barred, the ruling states, on previously established grounds, that they had been aware of the occurrence of the damage as at the execution of the deed of sale of the building, i.e. on 8 July 2008, so that this date constitutes the starting point of the statute of limitations, and, on its own grounds, that from 12 December 2009 and a fortiori from June 2011 they can no longer maintain the existence of an insurmountable event characterising a situation of force majeure, as required by Article 2234 of the Civil Code, and having prevented them from bringing the liability action within the five-year period, which only expired on 8 July 2013.

7. In so ruling, after having noted that it was not disputed by the parties that Mr and Ms [T] were, at the time of the execution of the deed of sale of 8 July 2008, in a state of psychological subjection, which meant that the statute of limitations could not have begun on that date, the *cour d'appel* (Court of Appeal), which did not draw the legal consequences from its own findings, infringed the above-mentioned text.

ON THESE GROUNDS, and without having to rule on the other pleas, the Court:

QUASHES AND SETS ASIDE all provisions, the ruling delivered on 4 March 2020, between the parties, by the *cour d'appel* (Court of Appeal) of Agen;

Returns the case and the parties to the status existing prior to the said ruling and refers them to the *cour d'appel* (Court of Appeal) of Bordeaux;

Orders Mr [R] and Mr [M] to pay the costs;

Pursuant to Article 700 of the Civil Procedure Code, rejects the claim made by Mr [R] and Mr [M] and orders them to pay to Mr and Ms [T] the total sum of 3,000 euros;

States that, at the request of the Prosecutor-General of the *Cour de cassation* (Court of cassation), the present ruling will be transmitted to be transcribed in the margin or following the ruling being quashed;

Thus decided by the *Cour de cassation* (Court of cassation), Third Civil Chamber, and pronounced by the President at the public hearing of the sixteenth of September, two thousand and twenty-one.

PLEA APPENDED to this ruling

Plea produced by SCP Lyon-Caen et Thiriez, lawyer, on behalf of Mr and Ms [T]

Mr and Ms [T] object to the ruling under appeal for declaring their legal action against Mr [R] and Mr [M] inadmissible as time-barred.

Whereas, first, personal actions or actions relating to personal property are time-barred after five years from the day on which the holder of a right knew or should have known the facts enabling the holder of the right to exercise it. The *cour d'appel* (Court of Appeal) maintained that "the starting point of the statute of limitations provided for in Article 2224 of the Civil Code is therefore 8 July 2008, as decided based on the relevant reasons given by the *tribunal d'instance* (Tribunal of First Instance), which the Court endorses, to end on 8 July 2013" and, by reasons deemed adopted by the *tribunal d'instance* (Tribunal of First Instance), that Mr and Ms [T] "were aware of the damage as at the execution of the deed of sale of the building, i.e. on 8 July 2008", without indicating how Mr and Ms [T], who were then under the psychological control of Mr [Q], as is clear from the statements in both the ruling under appeal and the judgment, which recalls in particular that "drawing all the conclusions from the facts retained by the criminal court, this tribunal has already ruled that the state of psychological subjection in which Mr and Ms [T] found themselves qualified them as not being of sound mind. However, this situation of total psychological subjection, which characterises the impossibility of Mr and Ms [T]

being able to act, cannot extend beyond the period of the statute of limitations, i.e. from 14 June 2001 to 21 October 2009". They would have, on 8 July 2008, been aware of this situation of psychological subjection and, consequently, of the facts allowing them to exercise their right to bring an action for liability against the notaries who drew up the deed of sale. In so ruling, the *cour d'appel* (Court of Appeal) deprived its decision of a legal basis under Article 2224 of the Civil Code.

Whereas, second, the statute of limitations for an action in liability begins on the date on which the damage was caused or on the date on which it was revealed to the victim if the latter establishes that he or she had not previously been aware of it. The *cour d'appel* (Court of Appeal) maintained that "the starting point of the statute of limitations provided for in Article 2224 of the Civil Code is therefore 8 July 2008, as decided based on the relevant reasons given by the *tribunal d'instance* (Tribunal of First Instance), which the Court endorses, to end on 8 July 2013" and, by reasons deemed adopted by the *tribunal d'instance* (Tribunal of First Instance), that held that Mr and Ms [T] "were aware of the damage as at the execution of the deed of sale of the building, i.e. on 8 July 2008", since they did not argue that the powers of attorney they had given for the sale, which were explicit, had been falsified, and did not establish that it had been concealed from Mr [F] [T] or that Ms [K] [T] had not been informed of it through her husband, without indicating how Mr and Ms [T], who were then under the psychological control of Mr [Q], as is clear from the statements in both the ruling under appeal and the judgment, which recalls in particular that "drawing all the conclusions from the facts retained by the criminal court, this tribunal has already ruled that the state of psychological subjection in which Mr and Ms [T] found themselves qualified them as not being of sound mind. However, this situation of total psychological subjection, which characterises the impossibility of Mr and Ms [T] being able to act, cannot extend beyond the period of the statute of limitations, i.e. from 14 June 2001 to 21 October 2009". They would have, on 8 July 2008, being in this situation of psychological subjection, been able to receive the confirmation of their damage, resulting from a sale to which, in these conditions, they had not freely consented. In so ruling, the *cour d'appel* (Court of Appeal) deprived its decision of a legal basis under Article 2224 of the Civil Code.

Whereas, third, personal actions or actions relating to personal property have a statute of limitations of five years from the day when the holder of a right knew or should have known the facts enabling him or her to exercise it. The statute of limitations for an action in liability begins when the damage is noted or from the date on which it is revealed to the victim if the latter establishes that he or she had not previously been aware of it. The *cour d'appel* (Court of Appeal) maintained that "the starting point of the statute of limitations provided for in Article 2224 of the Civil Code is therefore 8 July 2008, as decided based on the relevant reasons given by the *tribunal d'instance* (Tribunal of First Instance), which the Court endorses, to end on 8 July 2013" and, by reasons deemed adopted by the *tribunal d'instance* (Tribunal of First Instance), that Mr and Ms [T] "were aware of the damage as at the execution of the deed of sale of the building, i.e. on 8 July 2008", while considering that Mr and Ms [T] were then under the psychological control of Mr [Q]. The judgment recalls in particular that "drawing all the conclusions from the facts retained by the criminal court, this tribunal has already ruled that the state of psychological subjection in which Mr and Ms [T] found themselves qualified them as not being of sound mind. However, this situation of total psychological subjection, which characterises the impossibility of Mr and Ms [T] being able to act, cannot extend beyond the period of the statute of limitations, i.e. from 14 June 2001 to 21 October 2009", without investigating, as Mr and Ms [T] requested, whether, at the time of the sale their discernment had not been abolished, so that they did not know and could not have known the facts enabling them to take legal action, since they had not had and could not have had, in particular, knowledge of the damage of which they were victims. In so ruling, the *cour d'appel* (Court of Appeal) deprived its decision of a legal basis under Article 2224 of the Civil Code.

Whereas, fourth, the statute of limitations does not begin against a person who is unable to act as a result of an impediment resulting either from the law, from a contract, or from force majeure. Its starting point is postponed until the person can act. The *cour d'appel* (Court of Appeal) maintained that "the starting point of the statute of limitations provided for in Article 2224 of the Civil Code is therefore 8 July 2008, as decided based on the relevant reasons given by the *tribunal d'instance* (Tribunal of First Instance), which the Court endorses, to end on 8 July 2013" and, by reasons deemed adopted by the *tribunal d'instance* (Tribunal of First Instance), that Mr and Ms [T] "were aware of the damage as at the execution of the deed of sale of the building, i.e. on 8 July 2008", while considering that Mr and Ms [T] were then under the psychological control of Mr [Q]. The judgment recalls in particular that "drawing all the conclusions from the

facts retained by the criminal court, this tribunal has already ruled that the state of psychological subjection in which Mr and Ms [T] found themselves qualified them as not being of sound mind. However, this situation of total psychological subjection, which characterises the impossibility of Mr and Ms [T] being able to act, cannot extend beyond the period of the statute of limitations, i.e. from 14 June 2001 to 21 October 2009” and the ruling considered that “from 12 December 2009, and a fortiori from June 2011, they can no longer maintain the existence of an insurmountable event characterising a situation of force majeure as required by Article 2234 of the Civil Code”, without investigating, as the court was invited to do, whether, in this state, Mr and Ms [T] were not prevented from acting at the time of the sale, so that the statute of limitations could not have begun. In so ruling, the *cour d’appel* (Court of Appeal) deprived its decision of a legal basis under Article 2234 of the Civil Code.

Whereas, fifth, personal actions or actions relating to personal property are limited to five years from the day on which the holder of a right knew or should have known the facts enabling the holder to exercise it. The statute of limitations for an action in liability begins once the damage takes place or from the date on which it is revealed to the victim if the latter establishes that they had not previously been aware of it. The *cour d’appel* (Court of Appeal) maintained that “the starting point of the statute of limitations provided for in Article 2224 of the Civil Code is therefore 8 July 2008, as decided based on the relevant reasons given by the *tribunal d’instance* (Tribunal of First Instance), which the Court endorses, to end on 8 July 2013”, while considering that “from 12 December 2009, and a fortiori June 2011, they can no longer maintain the existence of an insurmountable event characterising a situation of force majeure as required by Article 2234 of the Civil Code”, without investigating, as the court was invited to do, whether it was not on 12 December 2009 that the damage occurred, and even only at the end of June 2011, that Mr and Ms [T] could have been aware that the sale had been concluded while they were under the psychological control of Mr [Q], and that it was therefore only at that time that they could have found out about the damage of which they were victims and, more broadly, known the facts that would have allowed them to take legal action. In so ruling, the *cour d’appel* (Court of Appeal) deprived its decision of a legal basis under Article 2224 of the Civil Code.

Whereas, sixth, the statute of limitations does not begin against a person who is unable to act because of an impediment resulting from the law, from a contract, or from force majeure. Its starting point is postponed until the person can act. The *cour d’appel* (Court of Appeal) maintained that “the starting point of the statute of limitations provided for in Article 2224 of the Civil Code is therefore 8 July 2008, as decided based on the relevant reasons given by the *tribunal d’instance* (Tribunal of First Instance), which the Court endorses, to end on 8 July 2013”, while considering that “from 12 December 2009, and a fortiori from June 2011, they can no longer maintain the existence of an insurmountable event characterising a situation of force majeure as required by Article 2234 of the Civil Code”, without investigating, as the court was invited to do, whether it was not on 12 December 2009, and even at the end of June 2011, only that the impediment to action of Mr and Ms [T] had ended. In so doing, the *cour d’appel* (Court of Appeal) deprived its decision of a legal basis under Article 2234 of the Civil Code.

Whereas, seventh, in the alternative, the court must, in all circumstances, assure the observance of and observe itself the adversarial principle. It cannot base its decision on the legal arguments that it has raised of its own motion, without having first invited the parties to present their observations. By retaining, of its own motion, and without first inviting the parties’ explanations in this respect, that “it is common ground that the suspension of the statute of limitations due to the impossibility of being able to act does not apply when the person concerned still had, at the time when this impediment ended, the time necessary to act before the expiry of the statute of limitations” and that “the appellants invoke the suspension of the statute of limitations beyond its limits, i.e. 21 October 2009, so that in their view their action brought on 9 December 2014 would not be time-barred as the *tribunal d’instance* (Tribunal of First Instance) has held. However, it is clear from the documents in the criminal proceedings submitted to the court and from their own written submissions that Mr and Ms [T] filed a civil action in the context of the investigation procedure by letter dated 12 December 2009. They also argue that psychiatric doctors testify that they were unable to manage their affairs until June 2011. Thus, from 12 December 2009, and a fortiori from June 2011, they can no longer maintain the existence of an insurmountable event characterising a situation of force majeure as required by Article 2234 of the Civil Code, having prevented them from bringing the action in liability that is the subject of the present proceedings within the five-year period, which only expired on 8 July 2013 in application of the above-mentioned principle. Consequently, they still had

the necessary time to act.” As such, the *cour d’appel* (Court of Appeal) disregarded the adversarial principle, thus infringing Article 16 of the Civil Procedure Code.

Whereas, eighth, in the alternative, the *cour d’appel* (Court of Appeal) applied the case law solution according to which “the suspension of the statute of limitations due to the impossibility of being able to act does not apply when the holder of the action still had, at the time when this impediment ended, the time necessary to act before the expiry of the statute of limitations”. However, this provision only concerns impediments arising during the period of suspension of the statute of limitations, and is inapplicable when the impediment arose from the outset, which was the case in this instance, under the very terms of the ruling and the judgment, a situation in which this impediment is a cause not of suspension of the statute of limitations but of postponement of the starting point of the statute of limitations. In so doing, the *cour d’appel* (Court of Appeal) infringed Article 2234 of the Civil Code.

And then, finally, and in any event, when the *cour d’appel* (Court of Appeal) applied the case law solution according to which “the suspension of the statute of limitations due to the impossibility of being able to act does not apply when the person concerned still had, at the time when this impediment ended, the time necessary to act before the expiry of the statute of limitations”, when this can no longer be applied under the terms of Article 2234 of the Civil Code, in its wording resulting from Act No. 2008-561 of 17 June 2008, it infringed Article 2234 of the Civil Code.

President : Mr Chauvin

Reporting Judge : Ms Abgrall, Judge

First Advocate-General : Ms Vassallo

Lawyer(s) : SCP Lyon-Caen et Thiriez – SCP Boré, Salve de Bruneton et Mégret

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International

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