

October 6, 2015

On 15 July 2015 the Constitutional Court of Azerbaijan issued a ruling in the case of Mammadova *et al. vs. Bank Technique*, a case where the claimants requested the court to partially invalidate a mortgage agreement over certain marital property (a house) on the grounds that the specific consent of one of the spouses was not procured. This decision was preceded by a series of decisions by lower courts, including those of the Guba First Instance Court, which rejected the claimant's claims and refused to invalidate the mortgage agreement; the Sumgayit Appellate Court, which reversed and remanded the decision of the Guba First Instance Court; and, finally, the Supreme Court, which reversed and remanded the decision of the Sumgayit Appellate Court. However, the Constitutional Court not only reversed the decision of the Supreme Court and remanded the case, it also affirmed several fundamental principles related to marital property under Azerbaijani law.

Namely, the Court was asked to clarify whether the property rights of Ms. Mammadova, protected under Article 29 of the Constitution of Azerbaijan, were violated by the decision of the Supreme Court, which seemed to agree with the respondent, Bank Technique, in that the mortgage agreement was valid in relation to the mortgaged marital property despite the absence of specific consent by Ms. Mammadova to mortgage such property, as required by law in relation to property held in common. (Paragraph IV of Article 29 of the Constitution of Azerbaijan states that no one can be deprived of his/her property without a decision of the court.)

## Common marital property

To answer this question the Constitutional Court first reiterated that, absent a nuptial agreement, all property (i) acquired during the period when a couple is legally married, and (ii) acquired using joint income of the couple is considered to be the common property of the couple. The Court clarified that the second test means that the property must be acquired for value, as opposed to property gifted or bequeathed to one of the spouses. In other words, if the property was acquired for value while the couple was legally married, such property is considered to be the common property of the spouses, without any regard to how much each of the spouses contributed financially or otherwise to acquiring such property or in whose name such property was registered. Here the Court disagreed with the Supreme Court's reasoning that, in order to classify the property as the common property of the spouses one must look beyond the two-part test mentioned above, which was set forth by the Constitutional Court in its decision dated 21 December 2012.

Once property is classified as common property, all rules in relation to, among other things, encumbering such property must be followed. (The property owned by the couple was indeed acquired for value during the time when Mr. Mammadov and Ms. Mammadova were legally married.) One such rule set forth in both the Azerbaijani Family Code and the Law on Mortgages is that the consent of a husband/wife, certified by a notary, must be obtained whenever a notarized agreement and/or a registrable agreement is being concluded in relation to the property of either of the spouses (NB: Mortgage agreements are required to be both notarized and registered with the state

register in Azerbaijan). An agreement concluded in violation of the consent requirements may be rescinded by the parties to it.

Based on the foregoing, the Court concluded that the decision of the Supreme Court did violate the constitutionally protected rights of Ms. Mammadova and therefore must be reversed and remanded to the Supreme Court, which must review the case anew based on the decision of the Constitutional Court in question.

## Application of statute of limitations

Further, the Court made it clear that a statute of limitations defense is an affirmative defense that may be raised by one of the parties only until such time that the court of first instance has adopted its decision. The mere fact that legal proceedings have been initiated after the maximum time period for bringing such claims has expired does not prevent the court from admitting the case into the docket and hearing it. One of the parties must raise this defense with the court of first instance, after which the court can make a relevant determination and may dismiss the case on the grounds that the statute of limitations has run.

## Scope of review by the Supreme Court

Finally, the Court also discussed the scope of review by the Supreme Court. The Court reiterated its position that was made clear in a number of its previous decisions—the Supreme Court may only examine whether the lower court made the correct legal determinations based on material Azerbaijani law and has no authority to make determination as to the facts of the case or allow new evidence to be admitted.

A full version of the decision (in the Azerbaijani language) can be accessed [here](#).

Law stated as of 15 July 2015.

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