



CAMMINO DIRITTO

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CONTRIBUTORS WIN: NO TO EQUITALIA FORECLOSURE ON FIRST HOME.

The Action Decree, together with one of the most important sentences issued by the Court of Cassation in 2014, sanctioned an extraordinary victory for the Contributors against Equitalia, auctions and compulsory enforcement of the past must be extinguished due to the cessation of the matter in issue, although the Action Decree only entered into force in 2013.

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The new law that forbids **Equitalia** to activate **first home** mortgage dates back to 2013 (1);

However it could be applied also in the past and therefore to the whole executive procedures launched before the renowned **Action Decree** became effective. This is the Victory of the tax payers supported by the recent **Court of Cassation sentence (Cass. sent. No. 19270 from 12.09.2014)**. The practical result: end to all expropriations in progress pursued from Equitalia on places of residence.

The introduction of Action Decree accounts for an actual revolution for the tax-collecting enforcement. Considering that the crisis faced by the country, from which it seems unable to recover, is a contributing factor, the new legal standards have imposed several limits on **Equitalia** concerning **Tax payments salvage**: the bans goes from applying joint bars on cars used for working, to foreclosure, to forbidding expropriations on properties (different from the residence) for debts under **€ 120000**.

The most important innovation concerns in particular the **main residence**, the law establishes that the collecting agent:

1. cannot start or continue expropriation on the only property belonging to the debtor (luxurious dwelling or categories A/8 and A19 of the land register excluded) on condition that the estate is used as residence and that the debtor himself inhabits it
2. Otherwise Equitalia can proceed with compulsory purchase if the total amount of the debt is over € 120000. In this case, expropriation can be pursued only if the mortgage was recorded in court at least six months before foreclosure

Before going to the most interesting part of the decision, the Court effectuates an important correction. "**The Action Decree**" prevents only Equitalia from starting expropriations on first home, however it does not forbid:

-neither the registration of a mortgage on first home (we need to specify that mortgage is not a compulsory enforcement act, but only a precautionary measure);

-nor to intervene on compulsory expropriations on first home already launched from third parties. Therefore, for example, if a Contributor has an expired debt with Equitalia but has not paid loan to the bank yet, in case it launches an execution on first home (for which it has granted financing), the collecting agent can take part in the procedure and demand his percentage on sales proceeds. If, explaining the reasons of filing an appeal against the bank the Contributor won the trial, the expropriation already started from the lending institution could not be proceeded by the only creditor remained in the process, Equitalia.

The most interesting consequence of the sentence is that of the Court of Cassation, whose decision is diametrically opposed to that of **Minister of Economy**, affirmed that the Action Decree applies also on procedures launched from Equitalia even before the new law enters into force.

This means that **each public auction, where the acting creditor corresponds to the collecting agent, must be extinguished** (the proper technical expression is: "**cessation of the matter in issue**").

Summarizing, the motivation of the sentence is the following: since the Action decree has not established a temporary discipline for legal action in progress, as usually happens, it must be interpreted in relation to each enforcement measure established after the law enters into force.

This means that if the Court has not assigned and transferred the real estate to the highest bidder yet, each enforcement measure must be definitely interrupted.

To those who are about to pack their bags: rejoice, you can go back home!

(Emmanuel Luciano)

(1) Art. 52, clause 1, lett. g) LD No. 69/2013, converted with law modification No. 98 from 09.08.2013.