



LEGAL FLASH



RULLING OF THE SUPREME COURT OF JUSTICE NO. 7/2023.

On 2 August 2023, the Supreme Court of Justice's Case Law Standardization Ruling (*Acórdão de Uniformização de Jurisprudência*) no. 7/2023, available [here](#) (the "Ruling") was published. This Ruling decided on an issue that had long been debated in the legal community: in a situation of sale and purchase of a defective generic item, should the regime of breach of contract apply and, therefore, should the obligation be subject to the 20-year limitation period (*prazo de prescrição*) provided for in article 309 of the Civil Code (as argued in the Ground Ruling) or, on the contrary, should the action based on the sale and purchase of a defective generic item be subject to the 6-month limitation period provided for in article 917 of the Civil Code (the position adopted in the Appealed Decision)?

Anticipating the conclusion, and although with two dissenting votes from the Supreme Court Judges António Magalhães and Maria Clara Sottomayor – which, it must be said, is not surprising given the controversy of the issue – the Supreme Court of Justice decided to standardize the case law in the following terms: "*An action for damages based on the sale of an undetermined item of a certain type which is defective is subject to the limitation period laid down in article 917 of the Civil Code, and the provisions of article 918 of the same Code do not preclude this.*"

However, despite the apparent assertiveness of this conclusion, the fact is that said Ruling still leaves some questions unanswered, insofar as, given the growing complexity of the contracts entered into and the sophistication of the production processes themselves, the solution proposed here could push judicial decisions away from material justice.

In order to understand said claim, one only needs to take into consideration a situation actually mentioned in Supreme Court Judge Maria Clara Sottomayor's dissenting vote, in which the defective product is used in a complex production process, and it is only

possible to find out about the defect when the finished product reaches the final consumer, and even then it is only possible to discover the origin of the defect after necessary and time-consuming tests. In this scenario, given the complexity of the issue, by the time the buyer is able to find out about the defect and its true origin, it is possible that the 6-month deadline for filing a lawsuit has long elapsed.

Considering the time limits laid down in articles 916 and 917 of the Civil Code, the decision now upheld is based on the assumption that it is possible for the buyer to identify the defect and report it within a maximum of 6 months, although it remains to be seen what the position of the Supreme Court of Justice will be in cases where it is proven that this was in fact not possible at all.

Therefore, given the practical reality and the industries' evolution, we believe that the Supreme Court of Justice will still be called upon to decide on matters related to the application of the time limits established in articles 916 and 917 of the Civil Code.

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