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The clause relating to spouses' contribution to household expenses set forth in a marriage contract prevents divorcing spouses from asserting a claim against each other in this respect

Pursuant to Article 214 of the French Civil Code, "*Where a marital agreement does not regulate the contribution of the spouses to the household expenses, they shall contribute to such expenses in proportion to their respective abilities*".

This provision applies regardless of the marital regime elected by the spouses, and enables to adjust, through a marriage contract, the contribution of each spouse to the household expenses.

This clause concerning the spouses' contribution to household expenses – primarily used in the framework of the separation of property regime – is of particular interest when the spouses divorce.

Indeed, upon liquidation of the marital property, the spouse who earns the highest income frequently seeks from the court the admission of a claim against the other spouse.

In a decision dated April 1, 2015[1], the *Cour de Cassation* (French Supreme Court) clarified the scope of the so-called contribution to household expenses clause.

In the absence of a marriage contract, the French legal marital regime that statutorily applies is that called "*communauté de biens réduite aux acquêts*", i.e. a regime according to which the marital property is limited to property acquired by the spouses during the marriage. Under this regime, in the absence of evidence to the contrary, any moveable and immovable asset/property acquired during the marriage shall be deemed the joint property of both spouses.

As such, in order to protect their property against potential external creditors, spouses sometimes elect to adopt the marital regime called "*séparation de biens*", defined in Articles 1536 *et seq.* of the French Civil Code, i.e. a regime under which the assets and revenues of the two spouses are held separately.

In such case, the spouses need to go to a notary to sign a marriage contract that will govern, in particular, their property relationships, and more specifically, the terms and conditions in which each of them will contribute to the household expenses.

In practice, notaries quasi-systematically insert a contribution clause drafted as follows: "*The future spouses will contribute to household expenses in proportion to their respective abilities, as per Articles 214 and 1537 of the [French] Civil Code. Each of them will be considered to have made his/her proper contribution day by day, so that neither of them will be subject to any accounting nor claim compensation from the other in this regard*".

This clause does not pose any difficulties until the divorce, when one of the spouses may be tempted to request from the other refund of the money invested in the couple, and, in particular, the funds used to finance the acquisition of jointly held real estate properties, e.g. the former marital home.

The spouse must thus request the Family Judge to acknowledge the existence of a claim against the other spouse and, for this purpose, he/she must demonstrate that his/her contributions were beyond what was required under Article 214 of the French Civil Code and by the provisions of the marriage contract.

If the Family Judge grants the spouse's request, the other spouse who believed to be the owner of, let's say, 50% of the martial home, could then find himself/herself in a situation where he/she would owe to the requesting spouse a sum corresponding to the value of his/her share in the home and, consequently, have *de facto* no longer any right in such property.

Courts sometimes considered that the clause set forth in the marriage contract only established a mere presumption of due compliance with the obligation to contribute to the household expenses and did not preclude a spouse from asserting a claim against the other.

Faced with conflicting decisions on the interpretation of the contribution to household expenses clause inserted by notaries in marriage contracts, the *Cour de Cassation* had recalled, in two decisions issued in 2013[2], that the presumption created by this clause was contractually binding and that it precluded one spouse from asserting a claim against the other in this respect.

In its decision dated April 1, 2015, the *Cour de Cassation* explicitly stated that the contribution to household expenses clause set forth in a marriage contract forbids the spouses to prove that either of them has not complied with his/her obligation, thereby closing the door to judge's possibility to acknowledge the existence of claim against a spouse on the grounds that the other has made a higher contribution to the household expenses.

[1] 1st Civil Chamber of the *Cour de Cassation*, April 1, 2015, appeal n° 14-14349

[2] 1st Civil Chamber of the *Cour de Cassation*, May 15, 2013, appeal n° 11-26933; 1st Civil Chamber of the *Cour de Cassation*, September 25, 2013, n°12-21892