

Introduction

The working session "Is your Property Defect Proof" was a joint venture between the Environmental Law Commission, the Real Estate Commission and the Private Clients Commission. From the start we asked ourselves, from our specific legal areas which problems we keep running into when representing our clients in real estate transactions. The next question was, whether these problems were somehow linked to the kind of client, buyer, seller, commercial party, private client. Uncovering the specific interest and potential pitfalls for your specific type of client is just the start. Then comes the hardest part, the negotiations. Arguably, the most important part of any transaction.

When the proverbial "all hell" breaks loose, almost all depends on the strength of the contract, the conditions under which the contract was entered into. With this in mind the field was set for the scope of the working session.

The working session

External speaker

Generally the working session could be divided into a theoretical and a practical part. The theory was provided for by our external guest speaker **Professor Jean-Baptiste RACINE**. Professor Racine delivered an in depth speech – in French I might add – on the role of environmental defects in French Property Law. Specific attention was paid to the leading French case law on this topic, which gave rise to some interesting and almost unexpected conclusions particularly with regard to the far reaching consequences of a breach of the duty to disclose.

Mock negotiations

After the theoretical opening, it was time to put the knowledge and practical skills of over-eager lawyers – of which there was no shortage – to the test. We introduced the case and more importantly the clients each portrayed by a panel member:

- Phillip Joseph Muller who has just inherited an old villa and its surrounding premises from his father, a successful engineer and business man. Mr. Muller is not interested in continuing the family business wants to sell the property.

Mr. Muller has been contacted by two interested buyers:

- There is Mr. **Gustavo Pissarro**, an artist, who is enchanted by the villa and the surrounding garden. He would like to renovate the villa and to live in it with his family.
- The other interested bidder, Mrs. **Amanda Hurry**, who plans to tear down the villa and construct the commercial building with a spacious parking area.

Teams

Each client was awarded a top-notch lawyer and a group of carefully selected legal advisors, namely Alessandra Tarissi De Jacobis, Christian Montana and Stefan Artner. The aim of the exercise was to enact the initial meeting with the client, gather the necessary information and make an inventory of the client's interests rating them in order of importance. The teams drafted brief memorandums of understanding outlining the crucial matters for their respective clients. After this hefty session each respective client and respective team of lawyers entered into negotiations with their counterpart. The aim of which of course was to seal the deal, in a way best serving your client.

Outcome

We were very pleased with the outcome of the session and especially the degree of audience participation. Needless to say the discussion preceding the negotiations and the negotiations themselves were thorough, even heated at times, but also quite humorous. The working session was the right balance between academic discussion and debate and a hands on practical approach to what real estate negotiations boil down to. Know your client, know the law and know when to call your opponents bluff.

Contributors to the working session: "Is your Property Defect Proof"

General reporters:

Environmental Law Commission: **Stefanie Beste**, Partner, Hoffmann Liebs Fritsch & Partner, Düsseldorf.

Real Estate Law Commission: **Geraldine Marmelstein**, lawyer at Gijs Heutink Advocaten, Amsterdam

Private Client Commission: **Ville Salonen**, Partner, Legal Counsel, Senior Consultant at Talentor Finland Oy, Helsinki

Moderator:

Stefanie Beste, Partner, Hoffmann Liebs Fritsch & Partner, Düsseldorf.

External Speaker:

Jean-Baptiste RACINE – an expert in Contract Law, International Commercial Law, and Arbitration Law – is a Law Professor at the Nice Sophia-Antipolis University, where he teaches Contract Law and heads the Master Degree programme on Economical Law. He is the author of several publications and has recently published: "*Manuel du droit du commerce international*" with the collaboration of Fabrice SIIRIAINEN – Dalloz 2007.

Professor Racine is also Deputy-director of the Research Centre in Economical Law (National Scientific Research Centre – Nice) and a Consultant at the Law Office of "MARTIN – VINCENT & partners" specialised in Environmental Law (Nice). Professor Racine will deliver a speech on current environmental constraints & stakes in real estate transactions.

Speakers:

Alessandra Tarissi De Jacobis: *Partner, Avvocato Studio Legale Antonelli Cocuzza & Associati, Milan*

Christian Montana, *Studio Legale Gardenal & Associati, Conegliano*

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Special thanks to:

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