



Authorisation of Servicers, a “headache” of auctions for securitized NPLs

In the post-pandemic era Non-Performing Loans servicing companies have intensified their efforts to pursue enforcement proceedings against borrowers of loans that were securitized in the years before Covid-19 boosted by the government backed Hercules plan. Nevertheless, such effort has recently been hindered by Supreme Court.

Conflicting Supreme Court Jurisprudence

The recent judgements of our country's Supreme Court (decisions nr. 1343/2022, 1102/2022, 822/2022) address the issue of the enforcement by servicers of receivables securitized under Greek law 3156/2003 (**Greek Securitisation Law**).

Supreme Court judgements nr. 822/2022 and 901/2021 ruled that servicers of securitized receivables are not entitled to proceed with enforcement actions for the collection of claims on behalf of the

beneficiaries of securitized receivables (special purpose vehicles), as they are not legalised as a non-beneficiary party (in Greek “μη δικαιούχος διάδικος”) and therefore cannot proceed with enforcement actions or other actions before courts (lawsuits or payment orders). On the contrary, claims transferred under Law 4354/2015 (**Greek NPL Law**), according to article 2 par. 4 thereof, servicers are legalised as a non-beneficiary party and are able to pursue in the name and on behalf of the beneficiary special purpose vehicle, remedies and legal actions for the collection of loan receivables, as well as to initiate pre-insolvency and bankruptcy proceedings.

More specifically, and in accordance with decision nr. 822/2022 of the Greek Supreme Court: *“From the above, it is clear that the aforementioned servicer acts as an agent and on behalf of the beneficiary securitization SPV. **The Law, in the case of transfer of securitized receivables for the purpose of securitization as defined in the Greek Securitization Law, does not grant servicers** (with which the*



*beneficiary securitization SPV is contracting) **the status of a non-beneficiary party**, even indirectly and without any express wording, so that the latter, as a non-beneficiary party, may, by way of a concession by the legislator, bring lawsuits and other legal proceedings before the courts on behalf of the beneficiary securitization SPV, seeking legal protection in its own name, **as it expressly does for servicers under article 2 par. 4 of the Greek NPL Law.***

On the other hand, Supreme Court judgements nr. 1343/2022 and 1102/2022 have accepted the servicers of securitized receivables as representatives of the securitization SPV before court and/or during enforcement procedures.

The solution

To tackle the uncertainty currently created by the contradictory court judgements recently issued, the introduction of a new law clarifying the legal framework and allowing Servicers to carry out enforcement procedures with retrospective effect would be expected. Instead, the Greek Government opted for a less political burdensome path and took the position that is for the plenum

of the Supreme Court to solve the legal dispute. The servicers intend to bring the issue before the Plenary Session of the Greek Supreme Court that will resolve the issue. As a matter of fact, this path can be time consuming.

Impact on the market

Until a clear position is adopted uncertainty will affect enforcement proceedings initiated by servicers, discourage new securitizations by the banks, as well the sales of portfolios in the secondary market. In addition, Government will be faced with the risk of calling the Greek State guarantees under the Hercules Program regarding existing securitized portfolios.

On the other hand, this development may put a downward pressure in the prices of the auctions, making auctions an attractive opportunity for investors.



If you have questions or would like additional information, please contact the authors:

[Fotini Mavrikaki](#), Junior Partner

fotini.mavrikaki@yourlegalpartners.gr

[Angelos Sarrigiannis](#), Junior Associate

angelos.sarrigiannis@yourlegalpartners.gr