

## litigation lawflash

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### French High Court Strengthens Rules Regarding Settlement Agreements

*The Court holds that settlement agreements have the force of a final and binding judgment only when all parties comply with the agreement's terms.*

On 12 July, the French Supreme Court for Judicial Matters (*Cour de cassation*) issued ruling Number 09-11.582,<sup>1</sup> finding that settlement agreements are binding only when parties comply with the agreement's terms. The High Court's decision strengthens the provisions of Article 2052 of the French Civil Code. Individuals and companies should take steps to comply with settlement agreements in order to ensure that these agreements are binding.

#### Background

In the above case, party X and party Y were facing neighborhood issues and decided to settle. Pursuant to the settlement agreement, party Y undertook to carry out works to prevent any further damage but failed to do so within the agreed time period. Therefore, party X filed a suit against party Y and claimed damages. The Court of appeal (Aix-en-Provence, 18 December 2008), ruled that party X was entitled to bring an action notwithstanding the existence of a settlement agreement.

Before the French Supreme Court, party Y, who had failed to perform the settlement agreement, claimed that the settlement had "the force of *res judicata* of a final and binding judgment as long as it has not been terminated by the Court based on one of the parties' failure to meet its obligations."

#### High Court's Findings

In adjudicating the case, the High Court reaffirmed Article 2052 of the French Civil Code, which provides that "as between the parties, settlement agreements have the force of *res judicata* of a final and binding judgment" only, however, when the parties comply with the terms of the settlement agreement.

In so holding, the High Court dismissed the argument of the party who had failed to perform the agreement [Y] and stated that "the settlement agreement, which settles the dispute only where it has been performed, can be relied upon by either party only if said party has complied with the conditions thereof."

#### Implications

Prior to this decision, the parties could have sought to argue that a breach of a settlement agreement could not impact the *res judicata* force of the settlement before a court could rule that the settlement agreement should be terminated. Now, with the High Court's decision supporting the inclusion of the phrase "subject to the due performance of this agreement" in settlement agreements, a party can bring an action before a court without delay in the event the other party breaches the settlement agreement.

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1. Cour de cassation [Cass.] [French supreme court for judicial matters] 1st civ., 12 July 2012.

# Morgan Lewis

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