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## Absence of spousal consent to mortgage the marital property may entail invalidation of the mortgage even if the marriage was later dissolved

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A recent Supreme Court judgement serves as a reminder of the importance of verifying the matrimonial history of mortgaged property before entering into a mortgage agreement in order to avoid potential challenges against the mortgage's validity.

In its resolution dated 5 February 2020, case No. 372/504/17, the Supreme Court ruled that an ex-spouse mortgaging jointly owned real estate without the consent of the other ex-spouse is a ground to invalidate such mortgage.

In this case, an ex-spouse mortgaged an apartment that was jointly acquired by the ex-spouses when they were married. However, the other ex-spouse did not consent to mortgaging the apartment and later filed a court claim to invalidate the relevant mortgage agreement.

The Supreme Court granted the claim and invalidated the mortgage agreement. The Supreme Court stated that a failure to obtain spousal consent before mortgaging real estate was a ground for the court to invalidate the mortgage agreement on the application of the non-consenting spouse.

The Supreme Court took the same approach in a case where the mortgaged real estate was acquired by ex-spouses in joint ownership during their marriage, but the marriage was later dissolved (provided the mortgaged property was never separated from the other ex-spouse). In other words, the Supreme Court expressed the view that the dissolution of the marriage in itself did not terminate the joint ownership of the property acquired by the spouses during the marriage.



**Olexander Martinenko**  
Partner, Head of Commercial, Regulatory  
and Disputes

T +38 044 391 3377  
E olexander.martinenko@cms-cmno.com



**Olga Shenk**  
Counsel, Commercial, Regulatory and  
Disputes

T +38 044 391 3377  
E olga.shenk@cms-cmno.com



**Vladyslav Kurylko**  
Associate, Commercial, Regulatory and  
Disputes

T +38 044 391 3377  
E vladyslav.kurylko@cms-cmno.com