

Supreme Court Judgment Dated 10 March 2016 (STS 151/2016)

The judgment of the Supreme Court analysed the objective scope of extension of the liability for obligations and debts for which, as appropriate, the director of a company should be liable and, more specifically, the scope of “the corporate obligations subsequent to the occurrence of the legal ground for dissolution”.

The subject of discussion is the company’s claim to the directors with regard to a debt from a purchase option agreement that the company had executed with a third party for the future sale and purchase of six plots of land located in La Joyosa. Once the purchase agreement had been executed, the third party, that by virtue of such agreement could choose between exercising the purchase option or terminating it with the return of all quantities paid plus interest, notified the company via bureafax of its decision not to exercise the purchase option and requested the return of all quantities paid through that date. In this context, the company did not heed the request of the third party, who subsequently sued for termination of the agreement and return of the money paid.

The First Instance Court upheld the complaint in its entirety, ordering the company to pay the quantities delivered by the plaintiff, plus legal interest and court costs, for which the directors of the company were jointly and severally liable for infringing their duty of diligence by having executed agreements in its name after it had incurred legal ground for dissolution.

The Appeal Court then only upheld the order for the directors to pay the court costs generated in first instance, since it considered that only such debt was subsequent to the occurrence of the legal ground for dissolution, since the payment obligation of the debt with the buyer-plaintiff was prior to the occurrence of the legal ground for dissolution, whereby the date of execution of the purchase option agreement should be deemed as the date of such obligation.

Accordingly, while the Supreme Court agreed with the Appeal Court ruling that the directors should only be liable for corporate debts assumed following the occurrence of the legal ground for dissolution and the payment obligation to the buyer-plaintiff was prior to that, the Supreme Court nevertheless disagrees with the argument of the Appeal Court.

The Supreme Court considered that the obligation of the company, consisting of returning the quantities paid plus any interest accrued to the plaintiff, did not arise when the purchase option agreement containing the explicit termination condition was executed, but instead when, following the fulfilment of such condition, the plaintiff made use of the power of termination granted in the agreement and notified the company of the termination and requested the refund of such quantities.

Thus, the Supreme Court explained that the obligation for corporate debts following the occurrence of the legal ground for dissolution when appropriate measures have not been taken (to seek dissolution or declare insolvency) imposed on directors by the Spanish Capital Companies Act is to encourage them to comply with their duty of diligence. Therefore, the Supreme Court explained that it is not correct to refer, when determining whether the obligation is prior or subsequent to the occurrence of the legal ground for dissolution, “to the moment at which the company assumed the obligation caused by the one subsequently declared”. In other words, the moment at which the company executed the purchase option agreement with the plaintiff, since in such case what is prior to the occurrence of the legal ground for dissolution is not the obligation to pay the plaintiff, but rather the prior legal relation from which such obligation derives.

In this sense, in the case of a restorative obligation deriving from the exercise of a power of termination, such as this case, such obligation does not arise when the legal transaction sought to be terminated (the purchase option agreement) takes place, but rather at the moment of exercise of the power of termination deriving from it and it is that moment in time that should be taken into consideration to determine whether or not the directors are liable, because these are obligations assumed prior or subsequent to the occurrence of the ground for company dissolution.