

Supreme Court Judgment of 7 October 2016 (STS 609/2016)

In this judgment, the Supreme Court provided its opinion on the preference of a pledge of rights over the later seizure of said pledged rights and, specifically, regarding third party proceedings (preferential rights) as exercised by the secured creditor when the secured loan is not liquid, mature or callable at the time of being enforced.

The subject of the litigation in this specific case is none other than the suitability or otherwise of third party proceedings (preferential rights) filed by the credit institution "Caixabank, S.A." in relation to certain bonds seized by the General Social Security Treasury. The aforementioned bonds, that had been pledged to the bank to secure a loan policy between said financial institution and the mercantile company "Ferancon, S.L.", were later seized by the General Social Security Treasury when the loan policy had not yet matured, at which time it was neither liquid nor callable (although admittedly the policy matured a few days after the claim was filed).

The Court of First Instance granted the preferential rights as claimed by the financial institution. However, the judgment was overruled by the Provincial Court of Santa Cruz de Tenerife, based on the consideration that the seniority of pledge is determined by the date of its constitution and not by the date of settlement of the debt in the secured loan policy. Although it confirmed that the right of pledge of the claimant of preference was senior to the seizure and also that, for the validity and perfection of the pledge, a record of registration of the pledge was not required, "it understood that the proceedings to determine preferential rights could not prosper as, when the loan secured with the pledge was enforced it was not yet mature, liquid or callable". Accordingly, the claimant of preferential rights filed an appeal with the Supreme Court, which granted said appeal and confirmed the judgment of the Court of First Instance.

In its judgment, the Supreme Court explained that the pledged loan, having been constituted prior to the bonds being seized, is senior to the rest of creditors in respect of what was obtained from executing the good on which the pledge was constituted. Notwithstanding the above, the resolution called into question whether this seniority may be valid when the secured policy has not yet matured when third party proceedings (preferential rights) are filed.

The Chamber indicated that, when there are several privileged loans with no collateral that is preferential in time, it makes sense that the claimant's loan be required to be true, liquid and callable. However, collateral constituted prior to the seizure would not require proceedings to determine preferential rights, as the embargo should uphold the collateral guarantee, the good being executed with its collateral as an encumbrance. As the Court explained, this would not pose a problem had the collateral been recorded in the Register. However, since this is not the case, effective seizure could vacate the collateral and, in such circumstances, the embargo could not be opposed in respect of the acquirer in execution.

Accordingly, so as to not leave the aforementioned security without effect and to enable the preferential right to prevail, the Supreme Court considered that it was a priority to uphold the seniority of the collateral of the pledge and the existence of the secured loan, relegating the requirements of liquidity and maturity of the loan.

This judgment accepts that the pledged creditor may enforce the seniority of collection granted by the collateral in respect of the executing creditor through the preferential rights, even though the collateral is neither liquid nor mature at the time of exercising the preference, since if in these cases the seniority of the pledge were ignored because the secured loan was neither liquid nor mature, and, accordingly, its legitimacy to enforce preference were denied, the guarantee would, to all intents and purposes, be rendered without effect.