

Judgment by the Superior Court of Justice of Catalonia (STSJ 58/2015), dated 20 July.

In this judgment, the Civil and Criminal Chamber of the Superior Court of Justice of Catalonia indicated that it is not possible to establish a general doctrine in respect of the use of common elements by certain private members of a condominium owners association. To properly resolve such situations it is necessary to uphold the specific provisions, in each case, of the deed of horizontal ownership and the association's bylaws.

This case concerned a challenge to an ownership agreement preventing the use of the swimming pool and gardens by the owners of vehicle parking garages.

The deed of horizontal property for that particular building, comprising 18 garages and 33 homes, potentially for independent use, specified that the swimming pool and all its facilities, as well as the gardens surrounding the building, were common elements of the estate as a whole, annexed to the private property of each of the departments of which the estate is comprised.

Accordingly, the Superior Court of Justice of Catalonia explained that the use of common elements is neither restricted nor prohibited to any department and that, since the ownership quotas of each department were based solely on the surface area of the various departments, with no specific reference to any lesser use of common elements by garage premises, the aforementioned premises are entitled to use all the property's common areas.

In this regard, the chamber explains that, in order to consider that the owners of garages are entitled to more restricted use of the common areas as compared to the entitlement of the owners of homes, such a restriction would have to be stipulated in the ownership deed and the bylaws governing the owners association, since a restriction of proprietary rights cannot be either presumed or interpreted extensively.

In general, common elements are the facilities and services located outside the exclusive areas, either because they are for use by all owners, as in the case of swimming pools, which are configured as common elements based on their usage, or because they are elements facilitating the use and enjoyment of said exclusive elements. It is also worth noting that no imperative rule is breached because the deed of ownership allows all common elements to be used by all co-owners of the building. In this case, the owners association had alleged the improper use of common elements by the owners of garages, although the Superior Court considers that it has not been proved that said owners have improperly used or enjoyed the swimming pool or garden, so it does not recognise this judicial prejudice.

To sum up, the court found that the use of the swimming pool and gardens by owners of premises belonging to the owners association was inferred (i) from the very "common" nature of these elements, which makes all private entities co-owners of them, (ii) from the express reference in the ownership deed to common elements being annexed to all the departments into which the property is divided, (iii) from the non-existence of any physical or legal restriction on their use by owners of premises for use as garages, and (iv) from the principle of legal security, as the goods were acquired in the understanding that the responsibilities and benefits they generate would respond to what was advertised and provided by law.