

Supreme Court (Civil Division 1), Judgment 53/2017, 27 January

This judgment of the Supreme Court, dated 27 January 2017, decided on the claim brought by an owners' community against two owner-debtors who had disputed the participation percentage assigned to their property and the additional service charge decided by the community for building renovation.

By way of background, the case arrived at the Supreme Court on cassation after the first instance court had found for the community, a decision subsequently upheld by the Valencia Provincial Appeal Court.

The Supreme Court granted leave to the appeal on cassation lodged by the two owners, who argued that the claimant lacked capacity and standing to hold the post of community president as they were not an owner, but rather the daughter of one of the community owners. On that basis, the appellants sought a declaration of invalidity of the owners' meetings in which the (non-owner) president was appointed and the additional service charges and monetary claims against the appellants, who had not paid the additional service charges, were decided.

However, the issue raised by the appellants was not the non-owner's capacity or lack of capacity to be president, an issue already argued and decided in numerous Supreme Court cases (see judgment 514/2015 (23 September) and judgment 901/2008 (14 October), among others). Rather, they questioned the validity of the meetings and resolutions adopted in the owners' meetings under the presidency of someone who could not lawfully hold that post.

As regards the invalidity of the appointment of a non-owner as president, the Supreme Court cited the above-mentioned judgments and declared that pursuant to the Joint Common Property Act, the president had to be appointed from among the owners of the community, as the Joint Common Property Act, in particular article 13, is mandatory, meaning that any act contrary to it must be deemed invalid in law.

Notwithstanding that, the Supreme Court explained that although the appointment of the non-owner president was invalid, the appellants could not rely on that invalidity to seek avoidance of the amounts they owed to the community, given that it was the community itself that had approved the additional service charges for the refurbishment of the building and who had sued them for non-payment. Finally, the Chamber of the Supreme Court concluded that the resolutions adopted by the owners' community were unaffected by the invalidity of the non-owner president's appointment as it was not reasonable to annul all the acts of management she had undertaken for the community if the resolutions in question had been ratified by the owners. Consequently, the resolutions adopted by the community under the president were not invalidated.