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THE SUPREME COURT REITERATES ITS PREVIOUS DOCTRINE REGARDING JOINT AND SEVERAL LIABILITY OF CONSTRUCTION STAKEHOLDERS

The Supreme Court once again applies the doctrine contained in the ruling of January 16 2015 in regard to the joint and several liability of builders by pointing out that within the scope of the damages considered in the Urban Development Law (the "LOE"), when the cause thereof cannot be individually identified or in the event of contributory culpability, the joint and severally liability that arises therefrom cannot be fully identified with the joint and several obligatory connection regulated by the Civil Code (art.1137), insofar as this liability is determined by the very court ruling. Therefore, the claim made against the developer, in and of itself, does not interrupt – in relation to all other operators involved in the construction process – the statute of limitations of his actions.

The magistrate of first instance dismissed on the grounds of untimeliness *(ratione temporis)* the claim brought by the Community of Owners of a building against the various operators involved, who requested the joint and several liability of the developer and the architects in relation to the defects or vices of the building.

The Provincial Court, however, partially admitted the appeal lodged by the Community of Owners and issued a joint and several ruling against the defendants (builder and architects), on the basis that the period for bringing the action against the builder was not time-barred, by application of article 1964 of the Civil Code (15 years), nor had the period to bring action against the architects, insofar as by interrupting the action against the builder, its effects were extended to all other construction stakeholders.

In light of the Court ruling, one of the architects appealed to the Supreme Court, on the grounds that the action against him was time-barred.

Given the situation, the Supreme Court rejected the interpretation of the Provincial Court as well as the fact that the joint and several liability contained in article 17 of the LOE is one of joint and several obligation, referring to its previous doctrine and pointing out the following:

1. The cases considered in article 17 of the LOE are appraised, so that joint and several liability of the construction stakeholders may only be understood to apply when (i) it is not possible to individually identify the cause of the damage sustained, or (ii) if contributory culpability of several intervening stakeholders can be proven to exist in such defects or damage.
2. Therefore, in principle and as a general rule, the liability of the stakeholders involved in the construction process must be understood as not joint and several but rather to be one of an individual and personal nature in accordance with the culpability of each one in regard to the end result of the construction, notwithstanding the joint and several liability which might arise in regard to the appraised cases in the aforementioned article 17 of the LOE.
3. Beyond the joint and several or not joint and several nature of the construction stakeholders, what cannot be understood is that it is a joint and several obligation pursuant to the parameters of the Civil Code, and therefore any action that is brought against a construction stakeholder (for instance, the builder) shall not interrupt the statute of limitations of actions against the rest of the construction stakeholders (such as architects or project managers). Notwithstanding the foregoing, the builder shall be held harmless from this interpretation insofar – in regard to art. 17.3 of the LOE mentioned earlier – he is held jointly and severally liable always and "in any event" even when the liabilities are clearly defined and the cause of damage is attributable to another construction stakeholder.

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