

## Judgement number 290/2017 of the Supreme Court, Civil Chamber No 1, of 12 May

The Civil Chamber of the Supreme Court, in its judgment of 12 May 2017, has ruled in favour of lessees of publicly promoted, government-subsidised housing in Madrid, whom the City Government intended to evict due to interpreting that the term of the lease had expired.

In accordance with applicable legislation, lease agreements of government-subsidised housing have a term of two years, and they can be extended as long as the lessee meets the requirements set forth in Decree 100/86 of 22 October, which regulates the Leasing of Government-Subsidised Housing (the "Decree on Leasing of Government-Subsidised Housing").

Leading up to this judgment, the company, Empresa Municipal de la Vivienda y Suelo de Madrid S.A., filed a suit against the lessees of a property for a declaratory judgment of eviction due to expiration of the term. In view of this situation, the Court of First Instance admitted the suit, considering that there was a contradiction in the actual clauses of the agreement regarding the duration. The court's interpretation was favourable to the lessee, as a party that had not participated in the drafting thereof. It concluded that the contractual term should be 15 years, and that the lessee should have the right to successive two-year extensions, conditioned upon compliance with the requirements set forth in the Decree on Leasing of Government-Subsidised Housing.

The first-instance ruling was appealed before the Provincial Court of Madrid, with the aforementioned company disagreeing with the court's interpretation and believing that eviction was applicable. In turn, the Provincial Court deemed that it could not be inferred – neither from the clauses of the contract nor from Article 3 of the Decree on Leasing of Government-Subsidised Housing (which establishes a two-year contractual term and two-year extensions) – that the lease agreement must always be indefinitely extended as long as the tenant complied with the financial conditions, since this would be contrary to the spirit of the Urban Leases Act (LAU), which in fact eliminated the forced extension recognised in the preceding Act.

Specifically, Articles 9 and 10 of the LAU, subject to acknowledging contractual freedom, determine that when a lease agreement is entered into for a period of less than three years, upon reaching the contractual termination date it must be extended for annual periods until the lease reaches the minimum term of three years.

Once this period has elapsed (if there is no notice of termination from either the lessor or the lessee), the relationship will continue for annual periods up to a maximum of three more years, unless the lessee states to the lessor one month in advance of the termination date of any of the annual terms that they do not wish to renew the agreement.

In this regard, the Provincial Court determined that, after that second three-year period elapses, the mechanism of tacit renewal recognised in civil regulations must come into play, such that the term of the agreement would be by years or months according to how the rent is determined. Therefore, in this event, the agreement would be understood to be extended for annual periods unless the lessor states that they do not wish to renew it.

Thus, an appeal to the Supreme Court was filed against the judgment of the Provincial Court, which was admitted by the Supreme Court, because it deemed that the Provincial Court had ruled in a contradictory manner in numerous judgments.

In its judgment, the Supreme Court stated that both the term of the lease and the extensions were adequately provided for in the clauses or stipulations of the lease agreement signed between the parties and that the covenants must be interpreted in accordance with the Decree on Leasing of Government-Subsidised Housing, thereby regulating the leasing of publicly promoted, government-subsidised housing. It also determined that administrative legislation is that which establishes the term of these types of contracts, **thereby establishing a system of a mandatory two-year extension if the lessee maintains the conditions required in Article 1 of the law, such that, if the lessee is not the owner or possessor of any other home by purchase or lease, or for any other reason in the Autonomous Community of Madrid, the aforementioned extension will apply.**

In conclusion, said provision for extension excludes the consideration of an indefinite, indeterminate or non-existent term that is contrary to the temporary nature essential to a lease agreement, as it was sustained by the interpretation of the company and the Provincial Court. The Supreme Court continued by indicating that, considering the type of contract, in which there was an especially "vulnerable" lessee, the stipulations of said lease agreement cannot be interpreted in the sense of allowing either of the parties to deem the agreement to be terminated with an advance notice of one month at any time and under any circumstance. Rather, the lessor may only evict the lessee when the latter does not comply with the requirements set forth in the Decree on Leasing of Government-Subsidised Housing or it is thus ordered by a mandatory rule.

Therefore, the Supreme Court proceeded to uphold the appeal, against the judgment of 13 November 2014 issued by the Provincial Court of Madrid. It overturned the ruling thereof, and it maintained the ruling of the Court of First Instance regarding which legislation has to be applied when terminating lease agreements signed by private individuals with the city government.