

Limit to the Maximum Term for Subrogation in Lease Agreements Executed Prior to 1985

Ruling 198/2017, 30 May, of the Coruña Provincial Court, Section 4

On 30 May 2017 the Coruña Provincial Court issued a ruling with respect to the eviction of a lessee on the grounds of the expiration of the legal term of the dwelling lease agreement, as a result of a claim for eviction filed by a real estate company against this tenant.

The specific circumstances of the case refer to the dwelling lease agreement executed and signed in 1943 by the father of the current defendant. Upon his death in 1960, his spouse subrogated to the position of lessee in the lease agreement and, lastly, upon her death in 2014, their daughter subrogated as lessee and is currently the defendant in these eviction proceedings.

The main cause centres on the fact that, during the second subrogation of the lease, in 2014, the lessee could not occupy the dwelling until the real estate company-lessor executed the works necessary to enable its occupancy.

To this respect, it is necessary to emphasise that the agreement was arranged prior to 9 May 1985, whereby Transitory Provision 2 of the Spanish Urban Lease Act ("LAU") is applicable to it. This is relevant due to the fact that this provision limits the maximum term of the second subrogation in leases with agreements executed before that date, stipulating that "Dwelling lease agreements executed prior to 9 May 1985 that persist on the date of the entry into force of this act, will continue to be governed by the rules relative to lease agreements of the recast text of the Spanish Lease Act of 1964 (...). Nevertheless, **if the subrogated tenant is the spouse and at the time of death there are children of the lessee** that live with him or her, **there could be a further subrogation. In this case, the agreement will expire in two years** or whenever the child reaches the age of twenty-five, if later". In other words, the agreement will expire two years following the subrogation by the child of the deceased subrogated tenant, namely and in this case, two years as of 2014.

However, the purpose of the litigation is not the expiration itself of the agreement by application of the aforementioned rule, which is unquestionable, but rather that the defendant party claims that, owing to the breach by the plaintiff of its obligation to perform the necessary works in the dwelling, it was not possible to use it during the two-year period of subrogation.

To this respect, the Provincial Court expressly provides that "in this case, **the validity of the agreement transpires in its entirety aside from the contractual behaviour of the plaintiff, whose expiration is the direct result of a legal mandate**, that sets the maximum term for the second subrogation of the lease". Furthermore, the court adds that "**the reciprocal nature of the agreement is no longer applicable**", which generated the obligations for both parties, but instead applies a legislative provision that is not possible to invalidate and, therefore, neither is it possible to extend the legal term of the agreement, set by Transitory Provision 2 of the LAU. Therefore, following the conclusion of the maximum term of the second subrogation of the lease, the agreement expires directly and automatically, regardless of whether the contractual behaviour of the lessor prevented the lessee from occupying the dwelling.

For all of these reasons, the Provincial Court ruled to dismiss the remedy of appeal filed by the defendant and confirmed the appealed ruling, which declared the end of the legal term of the subrogation and, therefore, the expiration of the lease agreement and subsequent eviction of the defendant, whether she was able to occupy the dwelling or otherwise, for reasons beyond her control or otherwise.

