

**Supreme Court Ruling Number 111/2018, Civil Chamber, Section I,
of 5 March 2018**

In the case at hand, two companies signed a sale and purchase agreement for the sale of a paper pulp manufacturing business. The transaction included all the rights, titles and interests held by the seller over the production assets, as well as the labour liabilities. The agreed method of payment involved a deferred payment of part of the price. After the agreement was signed, the purchasing company took possession of the paper stock manufacturing business. However, four months later, the roof of the main industrial unit collapsed, seriously damaging the paper manufacturing equipment that was the mainstay of the business. The restoration of the industrial unit was rendered economically infeasible, meaning the business could no longer operate.

As the seller had yet to claim the deferred payment from the purchaser, the latter gave notice to the seller of its wish to terminate the purchase and sale agreement owing to a breach of contract. Subsequently, the seller filed a lawsuit in the court of first instance, requesting that the rescission of the contract be rendered invalid, thus enabling it to demand the deferred payment. Nevertheless, the Court of First Instance number 8 of Santander dismissed the action.

The seller filed an appeal in the Cantabria Provincial Court, which was subsequently dismissed. The court's decision was based on the frustration of purpose of the contract given that it proved impracticable to continue with the activity – the delivery of an article other than the agreed one (*aliud pro alio*). The court confirmed that “incapacity of the subject of the transaction” already existed at the time of sale, as there was a serious risk of the facility collapsing, even though the seller was unaware of this.

In light of this second dismissal, the seller appealed to the Supreme Court, arguing, among other things, infringement of Section 1124 of the Spanish Civil Code (the power to terminate because of breach of contract), as well as infringement of the jurisprudential doctrine that distinguishes between a non-fundamental breach and a fundamental breach. Accordingly, the seller held that there was no incapacity related to the article sold, but rather a chain of events beyond the scope of its obligations that determined the material impossibility of continuing production under economically viable terms.

Having studied the appeal lodged by the seller, the Supreme Court stated that the defect existed prior to the signing of the contract. Accordingly, the Supreme Court cited its Ruling of 16 November 2000, which states that “full breach of a purchase and sale agreement exists in the case of the incapacity of the article sold to fulfil the purpose for which it was sold and consequently has left the buyer unsatisfied, which in these cases enables the latter to resort to the protection provided by Sections 1101 and 1124 of the Spanish Civil Code.” The Supreme Court confirmed that this had happened in this case, given that the subject matter of the contract could not meet the purpose for which it was bought, which was revealed within the six months provided for in Section 1490 of the Spanish Civil Code, and that it concerned a property that was not suitable for a business to operate in.

Moreover, as regards the infringement of the jurisprudential doctrine that distinguishes between a major and minor breach alleged by the seller, the Supreme Court confirmed the sentence of the previous instance, arguing that it was clear that there was a fundamental breach of contract and that the scarce use to which the subject matter of the contract was given did not entail that the contract had been performed. Accordingly, the Supreme Court stated that the “fundamental breach focuses on the satisfaction of the creditor's interest that justified the signing of the contract” and it was precisely this interest that had been taken into account when terminating the contract.

The ruling confirmed any previous judgments and concluded with the dismissal of the appellants' action.

Therefore, in purchase and sale agreements, if the subject of the sale proves incapable of satisfying the buyer's purpose, the purchaser can terminate the contract under Section 1124 of the Spanish Civil Code. Likewise, if an object becomes disabled shortly after its purchase, the purchase and sale contract can be terminated.