

Marta M^a Ruiz Jiménez
Traductora e intérprete jurado de inglés
15/05/2017

[I have been instructed to translate the main important parts of the judgment: Introduction, Facts in issue, paragraphs highlighted in yellow and Verdict]

Served on the 27/04/2020

JUDGMENT Nº 90

COURT OF APPEAL FROM MÁLAGA
5th Division

PRESIDENT: YOUR HONOUR
MR. HIPÓLITO HERNÁNDEZ BAREA
SENIOR JUDGES, YOUR HONOUR
MRS. MARÍA TERESA SÁEZ MARTÍNEZ
MRS. MARÍA PILAR RAMÍREZ BALBOTE

REFERENCE:
ORIGINAL COURT: COURT NUMBER 1 OF FUENGIROLA
APPEAL PROCEEDING NUMBER 104/18
ORDINARY TRIAL 838/17

In Málaga, on the 27th of February 2020

The fifth division of this Court of Appeal, composed of the aforementioned Senior Judges, has reviewed the appeal lodged against the judgment passed in the Ordinary trial 104/2018 followed in the aforesaid Court of Fuengirola. [REDACTED] appealed against the judgment, he is represented in this appeal by the Court Representative Mrs. María Rosario Palomino Martín and assisted by the lawyer Mr. Adrián Peña Botello, claimants in this proceeding. CLUB LA COSTA (UK) PLC SUCURSAL EN ESPAÑA objected the appeal and they were represented in this appeal proceeding by the Court Representative José Luis Rey Val and by the lawyer Mr. Jorge Martínez-Echevarría Maldonado, defendants in this proceeding;

[Translation carried out on the 08/05/2020]

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FACTS IN ISSUE

FIRST.- The Court of First Instance number 1 from Fuengirola passed a judgment on the 23rd of October 2017 in the aforesaid trial and the verdict reads as follows:

"I dismiss the claim filed by [REDACTED] against the company Club la Costa (UK) PLC Sucursal en España and therefore I must and do state there are no grounds to uphold the claims sought by the claimant against the company, ordering the claimant to pay the legal costs accrued".

SECOND.- The Court Representative from the claimant, [REDACTED] appealed against the judgment in due time and form. The said appeal was accepted for processing and once the Court served the corresponding notice, the Court Representative from the defendant challenged the appeal and once the deadline finished and the parties were summoned, the Court referred the case to this Court of Appeal; the case records were created and forwarded to the Judges who will decide. The voting and decision hearing was held on the 11th of February 2020 and the case records were ready for a judgment.

THIRD.- All legal provisions have been observed in this appeal.

Once reviewed, the Reporting Judge and Senior Judge MRS. MARÍA PILAR RAMÍREZ BALBOTE delivered the unanimous opinion of the Court.

[...]

From the paperwork provided, Club La Costa Leisure Limited appears as the seller company, it is a company who was already dissolved which belonged to the group Club La Cost, group formed by several companies, more than a hundred companies, who, promote, sell, market or deal with all kind of assets and services related to timeshare. In this present proceeding, the defendant is Club La Costa Uk PLC Sucursal en España, instead of the company who appears in the contract, Club La Costa Leisure Limited, given that this last one was dissolved in 2011, as it is evidenced in the certificate of dissolution provided (as document number 7). The English Companies House states that one of the multiple companies who form this group of companies is precisely the company referred, Club La Costa Leisure Limited, and it is also said that the companies between the same group of companies carry out economic transactions between them, and they share the money received with the rest of the group.

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[...]

The defendant tries to avoid (its responsibility) through the tricky distinction of a holiday ownership with the simple name of Club La Costa.[...] That is to say, they take advantage of the created confusion between companies; when they think convenient, they just cover themselves with the touristic activity they work for and if not, they use the created immunity due to the fact they have an own legal status. Indeed we are before a company conglomerate with the aim that those damaged are prevented or hindered to satisfy their legitimate interests. They do so through the instrumental mechanism of dissolving their duties accrued from the contract.

[...]

Therefore, the fraudulent use to damage third parties results in the application of the piercing the corporate veil doctrine."

[...]

Taking into account all the aforementioned, the application of the piercing the corporate veil doctrine seems obvious given that after reviewing all the documentation provided, the trama of the group of companies has been proved. In this case, there are several companies involved in the relationships we are taking into account: Club La Costa Leisure Limited: already dissolved seller company; Club la Costa Resort Development: the presumed principal of the dissolved company; whose address is in the Isle of Men; Club La Costa Resort Management, services company who charges the maintenance fees, addressed in the Isle of men but using telephones from Málaga; Club La Costa UK PLC, Sucursal en España, the only company of the Group Club La Costa who is in Spain, addressed in Málaga, where the resort is located; Club La Costa UK PLC, parent company of Club La Costa Sucursal.

Therefore, although it is true that the contracting company was already dissolved, this is not a reason for anybody to take responsibility for the contract, even less when Costa Group is still charging the annual fees of the said contract and it is obliged by the same, being the obliged responsible of the contract, the group of companies themselves.

[...]

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a) The payment of £8,203 is carried out without any kind of distinctions, just in the name of Club La Costa; b) The annual maintenance fees are paid to Club la Costa as a whole; [...] c) In the web of Club La Costa the addresses and telephone numbers are Spanish, [...]. In the social media from Club La Costa, the address is in Mijas; the central administration as well as the activity center are both in Mijas (being this city their operations center)[...] The defendant always attributes their contracts to a company from the Isle of Man, which is never mentioned in their contracts.

Due to the above data, the application of the piercing the corporate veil doctrine is obvious.

[...]

This Court of Appeal considers that the lack of application of the piercing the corporate veil doctrine in the judgment from the Court of First Instance is totally improper, given that the legal requirements to do so have been complied.

[...]

This Court of Appeal must mention the strong link between the two companies, the contracting company and the defendant, as well as with the other companies from the Group, existing an abusive fiction, a "*consilium fraudis*".

[...]

The fact that the defendant is CLC Resort Developments, have been proved, as well as the entire group. As the buyer faces a dissolved company from Costa Group, the obliged responsible of the contract is La Costa Group, being their sucursal in Spain, the defendant today, holder of the legal procedural relationship.

[...]

Once the contract has been examined, we can check that it does not fulfill the provisions of the Spanish Timeshare Law 42/1998 in any extent, given that it does not include the minimum content of the contract established by the Law in its Article 9. The object of the contract is not specified; an apartment is not mentioned, but a type of property in a Resort, Marina del Rey. That is to say, more than a partial breach of the Law, we face a systematic lack of compliance.

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C-1757

[...]

The defendant has not proved if they provided the prior information required by the Law, they do not question that the payments were made, or the moment where they were carried out. This implies a breach of the provisions of the articles 9 and 11 from the Spanish Timeshare Law 42/1998[...] and nevertheless the claimant had to pay part of the purchase price during the withdrawal and cooling off period (3months and 10 days).

[...]

VERDICT

We partially uphold the appeal lodged by the Court Representative Mrs. María Rosario Palomino Martín, on behalf of [REDACTED] and the judgment appealed dated on the 23rd of October 2017, in the case records of the ordinary trial from the Court of First Instance number 1 from Fuengirola is reversed. Instead, we must and do partially uphold the claim filed by the claimant against CLUB LA COSTA LEISURE LTD represented by the Court Representative Mr. José Luis Rey Val and consequently:

A).- The contract dated on the 13/10/2011 with reference number 650964, signed between [REDACTED] and Club La Costa (contract named Fractional Property Owners Club. Application and Purchase Agreement) is rendered null and void; given that it does not contain the minimum content required by the Spanish Law 42/1998, the contract is indefinite and against the law, and therefore null and void.

B).- We must and condemn Club La Costa (UK) PLC Sucursal en España to refund [REDACTED] all the amounts paid by him at signing the contact less the proportional amount corresponding to the years he has been able to use the resort, which makes for the defendant to pay the total amount of TWENTY SIX THOUSAND SIXTY ONE STERLING POUNDS £26,061.00, plus legal interests since the claim was filed.

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650964

C).- We must and do condemn Club La Costa (UK) PLC Sucursal en España to pay the claimant [REDACTED], double of the amount he paid in advance in the contract dated on the 13/10/2011, number 650964 during the legal withdrawal period, this amount is 8,203.00 sterling pounds.

D) The legal costs arisen in the Court of First Instance must be paid by the defendant. I do not make a specific statement concerning the payment of the legal costs arisen in this appeal proceeding.

By means of this ruling, we so state, order and sign.

E/

PUBLICATION.- The aforementioned judgment was read and published by Your Honour the Reporting Senior Judge, in a Public Hearing. I give faith.

[Doña Marta Mª Ruiz Jiménez, Traductora-Intérprete Jurado de inglés nombrada por el Ministerio de Asuntos Exteriores y de Cooperación, certifica que la que antecede es traducción fiel y completa al inglés de un documento redactado en español.

En Málaga, a 8 de mayo de 2020

I, Ms. Marta María Ruiz Jiménez, Sworn translator of English appointed by the Spanish Ministry of Foreign Affairs certify that the aforementioned is a complete and true copy into English of a document which has been originally written in Spanish

In Málaga, on the 8th of May 2020]

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