SENTENCE NO. 90

PROVINCIAL COURT MALAGA

Section 5

CHAIRMAN : ILMO. SR.

D. HIPOLITO HERNANDEZ BAREA

MAGISTRATES, ILTMOS. SRES.

MARIA TERESA SAEZ MARTINEZ

MARIA PILAR RAMIREZ BALBOTEO

REFERENCE:

COURT OF ORIGIN: JUZG. Nº 1 OF FUENGIROLA APPEAL ROLL

Nº 104/18

ORDINARY TRIAL NO. 838/17

In the city of Malaga, on February 27th, two thousand and twenty

Seen, by the 5th Section of this Provincial Court, integrated by the Magistrates indicated on the margin, the appeal filed against the sentence issued in the Ordinary Trial No. 104/2018 followed in the Court of reference. The appeal is filed by Mr. [redacted], represented in this appeal by the attorney Ms. María Rosario Palomino Martín and assisted by Mr. Adrián Peña Botello, plaintiff in the proceeding, the appeal is opposed by CLUB LA COSTA (UK) PLC SUCURSAL EN ESPAÑA represented in the appeal by the attorney Mr. José Luis Rey Val and assisted by Mr. Jorge Martínez- Echevarría Maldonado, defendant in the proceeding;

FACTUAL BACKGROUND

FIRST.- The Court of First Instance No. 1 of Fuengirola issued a judgment on October 23, 2017, in the aforementioned trial, whose ruling is as follows:

"Dismissing as dismissed the claim filed by Mr. [redacted] against the entity Club la Costa (UK) PLC Sucursal en España, I must declare and declare that the claims made against him are not admissible, with the plaintiff being ordered to pay the costs of the proceedings".

SECOND.- The representation of the plaintiff Mr. [redacted] filed an appeal in due time and form, which was admitted for processing, and the Court carried out the required transfers, opposing the appeal filed on the contrary by the procedural representation of the defendant and once the term had elapsed, after the parties had been summoned, the case was submitted to this section of the Court of Appeals, where the case was filed and the report has been turned over to the Court. The voting and judgment has taken place on February 11, 2020, being seen for sentence.

THIRD.- The legal requirements have been observed in the processing of the appeal.

The Court of Appeals is presided over by Judge MARIA PILAR RAMIREZ BALBOTEO, who expresses the opinion of the Chamber.

LEGAL BASIS

FIRST. The representation of the plaintiff Mr. [redacted] files a lawsuit alleging in summary that on October 13, 2011 he signed with the defendant entity a contract of use by turns for a price of 30. 303 euros, requesting a declaration of nullity of said contract for lack of determination of the accommodation, for breach of the mandatory time regime, for transfer of the shift before its valid registration, in short, for unlawfulness of the cause and for indetermination of the object, requesting, after stating the grounds of law that he considered applicable, to issue a judgment by which: 1º).- To declare the nullity of the contract dated 13/10/ 2011, number 650964 signed between the plaintiff and defendant.2º) - The entity Club la Costa (UK) PLC Sucursal en España is ordered to return to the plaintiff the price of the contract.

30,303 Euros. 3º.- The defendant is ordered to pay the plaintiff double the amount anticipated in the contract during the legal withdrawal period, amounting to a total of 8,203 Euros, and 4º.- The defendant is ordered to pay the legal interest from the filing of the lawsuit and to pay the legal costs of the proceedings.

The defendant entity opposed the claim filed requesting the dismissal of the claim due to lack of passive standing in the proceedings and with the imposition of costs to the adverse party, stating that it could not be held directly or jointly and severally liable since the contract had been signed 4 years before its incorporation, which was on December 29, 2015, and there was no connection between the plaintiff and the defendant.

The judgment of the court of first instance dismissed the claim brought by Mr. [redacted] against Club la Costa (UK) PLC Sucursal en España on the grounds that the aforementioned entity l a c k e d standing to sue, concluding that the defendant did not have any contractual relationship with the plaintiff, since the signatory of the contract of 13 December 2003 had not signed it.
-10 - 2011, Club La Costa Leisure Limited (dissolved on 9-07- 2013) without appearing as a subsidiary of the now defendant Club la Costa UK PLC Sucursal en España and 3rd) Club a Costa Leisure Limited acted as a proxy for Club La Costa Resort Developments .

The plaintiff's counsel filed an appeal against the aforementioned judgment, requesting that the judgment be reversed and that the claim be fully upheld in all its claims, with an express order for costs.

The appellant entity after making a previous allegation in which it highlights how the judgment completely omits argumentation on the application of the doctrine of the lifting of the veil by maintaining that the defendant entity is the only and authentic responsible for the entire corporate scheme, not assessing any of the documents provided or any of the alleged reasons and ignoring the doctrine of our Provincial Court, which in multiple judgments has repeatedly stated that Club La Costa is a conglomerate of companies with the intention o f hindering or preventing the injured parties from having their legitimate rights satisfied. It is stated

by the appellant under the first allegation that the claim does have a contractual relationship with the plaintiff, since the accounting documentation provided proves that Club la Costa UK PLC is the parent company of the group whose Branch in Spain is the branch of all these companies and service companies to which the fees are paid. Secondly, the defendant is also the branch of CLC Resort Developments, a company domiciled in the Isle of Man, being the dissolved entity that signed the contract, a subsidiary of Club La Costa Resots Developments, a company domiciled in the Isle of Man, without the consumer being harmed by the internal conglomerate of Club La Costa, nor with the confusion that this generates, whose companies collaborate closely with each other, and that in the eyes of the consumer act as a single entity. Thirdly, it requests the application of the doctrine of the lifting of the corporate veil since: a) A contract has been signed in Spain that violates Law 42 / 1998 in all its mandates, especially that of identifying the parties that compose it; b) The entity that on paper was obligated to the plaintiff has been dissolved; c).- There is another entity of the Group (based in the Isle of Mann) which does not appear in the contract, and which charges maintenance f e e s which are not specified in the contract. d) The dissolved entity has the same Director of the Board of Directors as the defendant entity. e) The defendant always imputes its contracts to another company in the Isle of Man, which is never mentioned in its contracts, denouncing the fraudulent intent with which it acts. In fourth place, he points out how Club Costa's scheme is to create companies and dissolve them in order to avoid obligations and responsibilities throughout the years, being the entity now being sued the one that sells the same product as its predecessor. And sixthly, it asserts the nullity of the contract and requests the return of the amounts paid, alleging that the lawsuit has not questioned the nullity at any time, focusing its opposition on diluting the responsibilities and endorsing them to extinct companies or companies with domicile in the Isle of Man.

The representation of the respondent appealed in turn, in the respective proceedings conferred on the appeal filed on the contrary, for the same reasons stated in its respective opposition brief, requesting the dismissal of the appeal with an express order for costs.

SECOND. As a previous allegation, the appellant highlights the lack of completeness of the judgment by completely omitting the argumentation on the application of the doctrine of the lifting of the veil and by maintaining that the defendant entity is the only and authentic responsible for the entire corporate scheme, not assessing any of the documents provided or any of the alleged reasons and ignoring the doctrine of our Provincial Court, which in multiple judgments has repeatedly stated that Club La Costa is a conglomerate of companies with the intention of hindering or preventing the injured parties from having their legitimate rights satisfied.

In this sense, it is necessary to bring up that by virtue of the provisions of Article 218.2 of Law 1/2000, of January 7, of Civil Procedure, in accordance with the provisions of Article 248.3 of the Organic Law of the Judiciary, it is effectively provided that the judicial body has the unavoidable obligation to resolve *"reasoned"* all the litigious points that have been the subject of debate, an obligation that derives from the constitutional mandate of Article 120.3 of the Spanish Constitution, which orders that judgments must always be reasoned, as well as Article 24 of the same Supreme Law, which imposes on Judges and Courts the unavoidable obligation to issue, after the corresponding debate, a decision based on law, an obligation that cannot be understood to be fulfilled with the mere decision of the judicial body, This obligation cannot be understood to be fulfilled with the mere decision of the judicial body, lacking in that point of the litigation of any motivation, since what is important and essential is that through the legal reasoning of any decision, the parties may know the reason for the decision for the purpose of its possible challenge and thus, at the same time, allow the higher judicial bodies to exercise the review function that corresponds to them, without this meaning, in any way whatsoever, This requirement does not imply an exhaustive description of the intellectual process followed to arrive at a decision in a certain sense, nor is it opposed to the brevity of the reasoning, as long as it shows that the decision adopted responds to the interested party and to the organs that control legality, The Constitutional Court has therefore pointed out that the obligation to give reasons or, what amounts to the same thing, to explain the judicial decision, does not entail a symmetrical requirement of length, rhetorical elegance, logical rigor or

scientific support, which depends on the author and the issues in dispute, since the Civil Procedure Law requires *"clarity"* and *"precision"*, which does not imply a slavish parallelism with respect to the allegations and arguments of the litigants, so that, in short, the legal reasoning of a judicial decision, sober and concise, fortunate or unfortunate, is nevertheless sufficient because it fulfills its function and makes known the criterion of the judicial body in an unequivocal manner -T.T.C. 1ª S. 159/1992, of October 26, 1992-, there being no precept that requires a very detailed investigation of the evidence, it being sufficient that from the terms in which the debate and joint examination of the evidence is expressed, in a line of sufficient legal rationality, one or several conclusions are reached that make up the ruling or decision -T.S. 1ª SS. of February 20, 1993, January 7, 1994, June 1, 1995, April 13, 1996 and June 9, 1998 and T.C. S. of October 7, 1991-, and T.C. S. of October 9, 1991-. of October 28, 1991-, which is the case here, since, rightly or wrongly, the judge in her decision, an aspect which will be examined below with regard to the merits and evidentiary assessment, offers in her sentence a series of reasons, for which it is considered that the doctrine of the lifting of the veil is not applicable in the case at hand, This conclusion may or may not be agreed with, but in no way can the (definitive) decision be blamed for lacking sufficient explanations to reject the claim and assess the lack of passive standing of the plaintiff entity, So much so, that the defendant itself has had maximum facility to argue all the considerations that it has considered convenient to make to challenge the court decision, without any kind of defencelessness in its conviction, without forgetting, and this is important, that such complaint is presented as sterile from the moment in which the nullity of the appealed resolution is not requested, limiting itself in the pleading of its pleading of formalization of the appeal to request its revocation with full dismissal of the lawsuit directed against it. For all the foregoing reasons, this plea must be dismissed.

THIRD.- The plaintiff-appellant reiterates in this appeal the passive legitimacy of the defendant entity to support the action brought and this against the allegations of the latter that have been accepted in the sentence, a motive that must be upheld, for the reasons that we will explain below.

Article 10 of the LEC states that "Legitimate parties shall be those who appear and act in court as owners of the legal relationship or object of the litigation". The STS of February 28, 2002 reminds us that "The legitimation "ad causam" consists of an objective position or condition in connection with the material relationship that is the object of the lawsuit that determines an aptitude to act in the same as a party; it is a quality of the person to be in the position that legally bases the recognition of the claim that is to be exercised". And in a similar sense, the judgment of the High Court of July 30, 1999 states that "disregarding the different assumptions with which a certain part of the scientific doctrine and even the jurisprudence has studied procedural standing, it must be considered as a presupposition of the substantive issue that has to be elucidated in a judicial dispute that specifies who must be a party to the same for the jurisdictional activity to produce all its effects. In other words, the procedural party must be the active or passive holder of the right being studied in the process".

We find ourselves in the case at hand before a contract signed between Mr. [redacted] as " Applicant party " and the Entity Club La Costa Leisure Limited dated 13/10 / 2011, contract number 650964 , which has as object a use by turn called Fractional Property to Club La Costa corresponding to 2 weeks , being the assigned property MDR 532 , Resort Marina del Rey , corresponding to him a total of points 1716 , being the contract price 30. 303 pounds to be paid a) 22.100 pounds that were considered already paid by delivery of previous uses acquired to Club La Costa and b) - 8. 203 pounds that were paid by bank transfer. From the documents provided, it is shown how the Entity

The seller, Club La Costa Leisure Limited, a dissolved company, belonged to the Club La Costa Group, made up of a series of companies, more than one hundred, which promote, sell, market or manage or manage all kinds of goods and services related to time-share ownership. Club La Costa UK is being sued in these proceedings. PLC Sucursal en España , instead of the company that appears in the Club La Costa contract. Leisure Limited , as it was dissolved dissolved in the year 2011 , and so stated in the certificate of dissolution certificate provided (Document No. 7) appearing in the Register British Mercantile, which is one of the many companies that make up this group. this group is precisely the entity referred to Club La Costa Leisure Limited ,y as among the

companies of the same group maintain economic transactions sharing the money received with the rest of the group ,

This Chamber on multiple occasions has had the opportunity to pronounce, in litigation with companies, such as the ones we are dealing with today in relation to the existence of a Group of Companies that make up the Club La Costa.The different entities of the group are controlled by the same administrators, administrators who control the current lawsuit in these proceedings. This Chamber expressly recognizes this in multiple resolutions in which it has examined and ruled on the judicial competence for the resolution of these proceedings, among which it is worth mentioning Order No. 189 issued on May 16, 2019 in Appeal 345/ 18 where it is textually established.

The existence of a group of companies is also recognized in many other resolutions : Sentence Provincial Court of Valencia Section 7th Rec 359 / 2011 , Sent AP Malaga of 6 / 04 / 2004 Appeal 507 / 2003 ; Sentence High Court of Justice of Andalusia No. 1060 / 2014 in labor matter in which was sued Paradise Trading SLU and other companies of Club La Costa " where it is reviewed."... *the defendant tries to evade through the artificial distinction between vacation product that would be given by the simple name Club La Costa and obligations that as legal persons would arise from the development in the legal traffic of the various companies involved in the Transaction.In other words, taking advantage of the corporate confusion created, when it is convenient for them, they take refuge in the simple touristic activity to which they are dedicated and when it is not in such a way, they take advantage of the immunity generated by the circumstance of having their own legal personality ..... It is in fact a conglomerate of companies with the intention of hindering or preventing the injured parties from seeing their legitimate interests satisfied through the instrumental mechanism of diluting the duties arising from the contract and the ownership of the properties affected among all of them with the consequent purpose of trying to protect and hide the entity with sufficient solvency to face the fulfillment of the obligations that could arise from the acquired commitments. Consequently, the fraudulent use that is made of the same with the purpose of harming third parties leads to the application of the theory of the lifting of the veil. "*

Regarding the issue raised in this appeal, the judgment of this Provincial Court section 6, Fj 2 no. 276/ 16 of April 25, 2016 (Rec 130/ 14 "....*in the sense that although one of the defendants does not expressly appear as a contracting party, and, therefore and "prima facie", it would lack standing "ad causam", based on the basic idea that reiterated case law proscribes the prevalence of the legal personality that is created if this commits fraud of law or harms the rights of third parties by hiding behind the fact that the corporate entity/entities are different in their composition and structure, there being no interrelationship of any kind between them, is why it is allowed to penetrate into the substratum of the legal entities in order to avoid a misuse of the personality in the antisocial exercise of its right, so there is no hesitation in bringing the artifice of the commercial company to decide the cases according to reality, so that in the conflict between legal certainty and justice, both values enshrined in the Spanish Constitution, it has been prudentially decided, according to the cases and circumstances, to apply, by way of equity and acceptance of the principle of good faith -article 7.1 of the Civil Code-, the practice of penetrating into the personal "substratum" of the entities or companies, to which the law confers legal personality, in order to avoid that under the cover of a legal fiction or form -of obligatory respect, of course- private or public interests can be harmed as a way of fraud -article 6.4 of the Civil Code-, admitting, therefore, the possibility that Judges and Courts can penetrate into the personal "substratum" of the entities or companies.*

- "lifting the legal veil"- within those persons when it is necessary to avoid the abuse of that independence -article 7.2 of the Civil Code- to the detriment of others or t h e rights of others - article 10 of the Spanish Constitution-, making it necessary to discover when the corporate entity is fictitious and its appearance is intended to evade the true position it occupies in its relationship with one or more other interposed companies, pretending to pour on the fictitious company patrimonial consequences or the fulfillment of the contract in question, exempting itself from any kind of patrimonial liability (SSTS 1.º 28 May 1984, 24 September 1987, 4 March 1988, 12 November 1988 and 12 November 1988).

1991, June 7 and 12 and December 1, 1995 and April 8, 1996, among many others), and it should be added in this regard that it is not necessary that the person who commits the fraud of law has the awareness or intention to circumvent it, since as stated in the STS of March 16, 1992, "fraud is synonymous with damage or harm achieved by means or mechanism used for that purpose, being valid both as a subterfuge or ruse, with infringement of the general legal duties imposed on persons, implying, in essence, an act "contra legem",

The Court considers it a question of fact to determine in the specific case whether there has been independent action by the different defendant companies or whether, on the contrary, they are interrelated to each other in the negotiation in question. "

The aforementioned judgment continues stating "It should be noted that, on the one hand, the judgment under appeal itself echoes the doubts raised by the existence of a multiplicity of companies, in turn, owners of the apartments that make up the complex, all of them with the same registered office located abroad and with the same attorney-in-fact, and, on the other hand, that the defendant Sunset Beach Club S.A. reiterates that its error has been to have chosen for its name the same name of the complex it operates, "Sunset Beach Club". Well, both the doubts expressed by the lower court on the passive standing of the aforementioned co-defendant and the error in the choice of name acknowledged by the former, should have led to the claim being fully upheld with respect to both co-defendants, having violated in this sense the rules on the *onus probandi contained in article 217 LEC, since the first paragraph of this precept provides: "When, at the time of issuing a judgment or similar decision, the court considers some facts relevant to the decision to be doubtful, it shall reject the claims of the plaintiff or counterclaimant, or those of the defendant or counterclaimant, depending on whether the burden of proving the facts that remain uncertain and underlie the claims corresponds to one or the other." In the case under trial, the confusing situation created by the use of identical names between different legal entities (according to the defendant thesis) which in turn intervene in the development of a contract in which they do not appear as contracting parties, placed on the defendant the burden of proving that, despite these coincidences, it does not have standing to support the action brought since it is an entity outside the contractual relationship at issue, which it has failed to do, the judgment under appeal forgetting the provisions of section 7 of the same article 217 LEC: "7. For the application of the provisions of the preceding paragraphs of this article, the court shall bear in mind the availability and ease of proof corresponding to each of the parties to the litigation", since the plaintiff has been required to provide fiendish proof of the interconnection between the two co-defendants and their identity vis-à-vis the plaintiff, when the*

The only party that had at its disposal to provide evidence on these points was the defendant. Consequently, if there was an error in the choice of the name, the doubts that this error produces cannot harm the contracting consumer but it is the entity or entities that have created the confusion that must bear the damages derived from the same and if the same name is chosen as the company to which it provides its services marketing its products, The defendant should have made sure that the third party contracting with one or the other knows with which of the two it is contracting, especially when one of them is domiciled in the Isles of Man and, consequently, its presumption of acting in good faith is diminished. "

In view of the foregoing, it is evident that the doctrine or the lifting of the veil technique, since the examination of all the documentation provided by the the network of companies that comprise it has been accredited. In the case there are several companies involved in the relationships we are dealing with here Club la Costa Leisure Limited : seller entity already dissolved ; Club La Costa Resort Development : the alleged principal of the dissolved company, whose registered office is in the Isle of Man; Club La Costa Resort Management , a service company that collects fees from maintenance , domiciled in the Isle of Man , which uses telephones in Malaga; Club La Costa UK PLC, Spain branch, the only branch of Club La Costa Group in Spain, domiciled in Malaga, where the Resort, Club La Costa UK PLC is located, parent entity of the branch .

Therefore, even if it is true that the contracting company is dissolved, this cannot be no one should be held accountable for the contract, especially when the Costa group continues to be the annual installments of said contract and continues to be bound by the same, being the The group as a whole is liable for the contract, and not only the dissolved company, since other companies are involved in the contractual relationship and there is also evidence of the coincidence between the administrator of the dissolved company Club Leisure Limited, RJ Bratt, signatory of the contract in question, but also owner and director of the entire Club La Costa group, and managing director of the defendant Club La Costa UK PLC branch in Spain.

8,203lbs. for the contract was made without distinction of any kind, but only in the name of Club La Costa; b) Annual maintenance fees are made to Club La Costa in its

Although a company domiciled in the Isle of Man appears on the receipts, a Spanish telephone number is provided on the receipt for all types of queries. c) On the web site of the

The addresses and contact telephone numbers of the La Costa group are in Spain, and in addition, customers are reminded that they work during Spanish hours. The address of the website is in Mijas, in the social networks of Club La Costa the address is in Mijas, the administration is in Mijas.

and the center of activities is in Mijas (being this locality its center of activity).

operations; the contract was signed in Mijas and the property on which the right of use is located in Mijas. Furthermore, when registering the consolidated accounts of the group in the Commercial Registry of Malaga, it is stated that the Group has a branch outside the United Kingdom, the Branch called "Club La Costa (UK) PLC Branch in Spain has its headquarters in Spain. It logically follows logically from what has been done: a) That a contract has been signed in Spain in breach of Law 42/1998; b) The entity that on paper was bound to the plaintiff has been dissolved; c).- There is another entity of the Group (based in the Isle of Man) which does not appear in the contract and which charges annual maintenance fees which were not specified in the contract; d) - the dissolved entity has the same Director of the Board of Directors as the defendant; the defendant always charges its contracts to another company on the Island; e) - the defendant always charges its contracts to another company on the Isle of Man; f) - the defendant has the same Director of the Board of Directors as the defendant; g) - the defendant always charges its contracts to another company on the Isle of Man.

of Man, which is never mentioned in their contracts.

It is clear from the above data that the application of the doctrine of lifting of the

the case at hand. Regarding this institution, of doctrinal and jurisprudential construction, of Anglo-Saxon origin, it is reiterated and pacific jurisprudence that indicates that it allows to investigate in the substratum of a legal person, to find out if through it it is intended to violate the compliance of an obligation contracted apparently by another natural or legal person, In this respect, the jurisprudential doctrine has declared that *"this operation of lifting the corporate veil must be used carefully"*, and this type of technique cannot be used automatically, which leads to totally disregarding the legal person and leads to situations of material injustice -T.S. 1st SS. of May 27, 1995, October 31, 1996 and April 2, 2002, among many others-, its function being to avoid the abuse of the legal person, to obtain a fraudulent purpose, its concept being the denial of the separation of the patrimony of a legal person and a natural person, to defraud a third party, being thus possible its application when the company is revealed as a way of acting in the traffic of its partner.

The company may be used as a sole proprietorship, which thus seeks to limit its liability to the assets contributed to the company (unless it complies with the legal requirements for this), or as an instrument created to defraud third parties by the partners, or to breach its obligations to them, (STS of October 11, 2000, two of November 22, 2000, April 5 and 18 and October 16, 2001, June 3, July 14 and September 16, 2004), Thus, its application is permitted in order to penetrate into the substratum of the companies to perceive their true reality and thus be able to ascertain whether or not the legal personality is used as a fiction for a purpose of defrauding third parties by the partners, Thus, its application is allowed to penetrate into the substratum of the companies to perceive their authentic reality and to be able to find out if the patrimonial autonomy consubstantial to the legal personality is or not used as a fiction with a fraudulent or abusive purpose with the purpose of harming a third party, This opens up a wide range of possibilities, such as breach of contract, pretending insolvency, removing assets from compulsory execution, circumventing or making certain rights prevail or evading contractual or extra-contractual liability, in order to prevent fraudulent purposes from being obtained under the guise of legal personality.

And this Chamber considers that the lack of application made in the lower court's ruling of the lifting of the veil doctrine is totally inappropriate because if the the requirements established by case law for this purpose are met. In this order of things, it is appropriate to bring up the pronouncements of the Supreme Court, of its First Chamber, insofar as it considers that this doctrine is of exceptional application, although it is true that the cases in which it can be applied constitute a "numerus apertus". That the doctrine of the lifting of the veil, under this prism, tries to avoid that the abuse of the legal personality can harm public or private interests, cause damage or circumvent the rights of others; that it is, in any case, to avoid that the legal personality of a company is used as a means or instrument of fraud or with a fraudulent purpose, and that such fraudulent purpose is produced, among other cases, when it is a question of avoiding personal responsibilities. In the case in question, there are elements that allow inferring that the commercial company "as the seller of the house, has been used as a fraudulent instrument or with fraudulent intent, to harm the rights of the third party purchasers, stating that the use of the corporate form, in short, It is also established that the co-defendant companies, against which the monetary claim formulated in the lawsuit is directed and in which the co-defendants participate in one way or another, present solvency problems that prevent the application of the appropriate rule to the case, as well as the fact that the co-defendants have solvency problems that prevent the application of the appropriate rule to the case.

to enforce its eventual conviction. For all these reasons it is concluded that it is not easy to know which of the various companies that constitute the framework should be sued, once the contracting company has been dissolved, since it seems that they belong to the same business group and are governed by the same persons, so that they evade liability under the camouflage of different names used indistinctly for the various business activities of "promotion", "marketing", "construction" or "sale, therefore, that the confusion of personalities seems indisputable, being able, in a sense contrary to the general one, to resort to the doctrine of the penetration of the corporate reality - the so-called theory of the "lifting of the veil" - to identify that confusion of personalities and, to maintain the standing "ad causam" of the appellant as defendant, so that also in this appeal the alleged lack of passive standing invoked by the co-defendant, and appreciated in the instance, must be dismissed.

In the case in question, in short, and as an exegesis of the above, the Court must express the close connection between the two companies.
and defendant and others of the Group, in the presence of an abusive fiction, a
consilum Fraudis, a single patrimony and a confusion in the face of the consumer when they share the denomination and trademark of Club La Costa, which by application of the theory of the lifting of the legal veil will have to respond to the claims of the contracting party in compliance. Likewise, from all that has been exposed, the contractual link between the defendant and the plaintiff is accredited for the reasons already exposed, as well as the
the fact that the Respondent is a branch of CLC Resort Devepopments , and of the
whole. As the buyer is a dissolved the buyer is dealing with a dissolved company of the Costa Group, the
The La Costa group is the passive obligor of the contract, being its branch in Spain, which today is the defendant, holder of the procedural legal relationship, and therefore has passive legitimacy in these proceedings, and therefore this ground of appeal must be dismissed.

FOURTH - With regard to the lack of international judicial jurisdiction to hear the claim as it corresponds to the English courts referred to by the appellee in its opposition brief and for the case of understanding the passive standing of the defendant, it must be assumed that this is an ex novo issue that in no way has been raised previously, since this lack of jurisdiction has not been raised either in the answer to the claim or through the filing of the plea of no contest.

of jurisdiction in time and form.We cannot forget that since the second instance is not a new trial, the parties cannot pretend to reproduce, not even partially, those allegations that are proper of the first instance, nor formulate new pretensions or allegations not formulated in that one opportunely, being reiterated doctrine by the jurisprudence the one that indicates that, although the appeal allows the Court of second instance to hear the case in its entirety, it does not constitute a new trial, nor does it authorize the resolution of problems or issues different from those raised in the first instance, since this is contrary to the general principle "*pendente apellatione nihil innovetur*"; On the c o n t r a r y , the proper function of the appeal is to allow a second jurisdictional body to re-examine the petitions deduced and the pronouncements issued in the first degree, in the light of the justifications and evidence practiced therein. The Law places the appellate court in a situation analogous to that in which the first instance court found itself at the time of the decision, without, as a rule, t h e preclusions already produced being devitalized; even though the second instance is inspired by the purpose of opening to the control of the Superior Court both the *quaestio facti* and the *quaestio iuris*, they are maintained as such second instance, with preclusive effects with respect to the first, in such a way that, although in the second degree of jurisdiction both questions are considered to be reproduced with full amplitude, it is so to the extent and as they were established in the first. The allegations regarding jurisdiction that are now made constitute a *mutatio libelli*, since they raise the defense issue in a new way, and this prevents its estimation by this Court of Appeals since we would violate article 218 of the L.E.C., in relation to article 456 of the same Procedural Text.

Notwithstanding the foregoing we must review that on this issue this Court has repeatedly ruled in favor of the competence of the Spanish Courts for its examination .Suffice it to cite the orders issued by this Chamber in November 2019 and January 2020 in the appeal roll 937 / 18 and 938/ 18 , where it concludes this competence of the Spanish courts in the following terms :

"For this purpose, it is necessary to refer to Royal Legislative Decree 1/2007, of November 16, 2007, which approves the revised text of the General Law for the Defense of Consumers and Users and other complementary laws, a regulation that transposes the Community directives on the protection of consumers and users. The Explanatory Memorandum of RDL 1/2007 states that consumers and users are entitled to the protection of their rights.

user, as defined in the law, is the natural or legal person who acts in a sphere outside a business or professional activity. That is, who intervenes in consumer relations for private purposes, contracting goods and services as final recipient, without incorporating them, either directly or indirectly, in processes of production, marketing or provision to third parties. In this sense, Art. 3 establishes the following definition: For the purposes of this regulation and without prejudice to the provisions expressly set forth in its third and fourth books, consumers or users are natural or legal persons acting outside a business or professional activity. It is clear that the aforementioned definition of consumer is fully applicable to the plaintiffs.

Specifically, in the field of contracts concluded between a consumer and a businessman/professional, the competition rules are mandatory, so that submission agreements can only be considered as prevailing in the cases provided for in the Regulation itself (art. 19), without the general rules on the extension of competition being applicable in this case (art. 25), which is justified by the recitals of the Regulation, which, with regard to contracts concluded by consumers, states that the weaker party must be protected by competition rules that are more favorable to the weaker party by means of competition rules that are more favorable to the weaker party. 25), which is justified by the recitals of the Regulation, which, as regards c o n s u m e r contracts, state that the weaker party must be protected by competition rules that are more favorable to its interests than those provided for by the general rules (recital 18).

Well, in the first place and prior to entering into other considerations, we must say that an agreement of submission to the Courts of another State, in order to exclude the jurisdiction of the Spanish Courts, must comply with these two requirements:
1º. The agreement must be valid under the rules of domestic law of the Member S t a t e designated in the agreement.
2º. It must be an agreement that attributes jurisdiction "exclusively" to said Courts.

The first of the requirements is important in these cases, since it is an adhesion contract with general terms and conditions entered into by consumers with the defendant company, so that, although it is true that, as has already been said, under Regulation 1215/2012, the rules of domestic law of the designated Member State should apply, as stated in the twentieth recital, according to which "The question of whether an agreement conferring jurisdiction in favor of an organ

The fact that "a specific court of a Member State or of its courts in general is null and void as to its substantive validity must be decided in accordance with the law of the Member State of the court or courts designated in the agreement, including the conflict-of-law rules of that Member State", which is reflected in Art. 19.3) in fine, since it establishes that agreements between the consumer and his co-contractor, both domiciled or habitually resident in the same Member State at the time of the conclusion of the contract, which confer jurisdiction on the courts of that State, shall prevail and shall have the effect of derogating from the other criteria established, provided that the law of that State does not prohibit such agreements.

The truth is that, however, neither the representation of "CLUB LA COSTA (UK) PLC", which supports its defense of the competence of the English courts on the contractual submission agreement, proves that the legislation of the United Kingdom of Great Britain and Northern Ireland does not prohibit agreements with consumers, nor does the appellant prove the content and meaning of the British legislation, so that this Court having to resolve in accordance with the terms raised by the party that raised the question of jurisdiction, which did not even comply with the provisions of paragraph four of art. 22 ter of the LOPJ requesting, by virtue of this agreement, the suspension of the proceedings pending the pronouncement of the courts of the United Kingdom, but rather requested that jurisdiction be declined and this is what the appealed order has accepted, without there being any record, on the other hand, that any proceedings have been brought in the United Kingdom for the courts of that Member State to pronounce, the decision of the appeal necessarily leads to the provisions of Art. 67 of the Texto Refundido de la Ley General para la Defensa de Consumidores y Usuarios, according to which "The law applicable to contracts concluded with consumers and users shall be determined by the provisions of Regulation (EC) no. 593/2008 of the European Parliament and of the Council of Ministers of the European Union.No. 593/2008 of the European Parliament and of the Council, of 17 June 2008, on the law applicable to contractual obligations (Rome I), as well as by the other provisions of European Union Law applicable to them", but "when it has not been possible to determine the content of the foreign law, the material Spanish law will be applied subsidiarily", so that it would be necessary to apply said consumer protection legislation, in which the second paragraph of the same article provides that: "The rules of protection against unfair terms contained in Articles 82 to 91, both inclusive, will be applicable to consumers and users, whatever the

law chosen by the parties to govern the contract, where the contract has a close connection with the territory of a Member State of the European Economic Area".

This first question on the validity of the contractual agreement being framed, therefore, within the regime established in the aforementioned Law, approved by Royal Legislative Decree 1/2007, of November 16, pursuant to art. 90, the agreement would not lack validity since it does not establish express submission to a Judge or Court other than the one corresponding to the domicile of the plaintiff consumers, since they reside in the United Kingdom.

This submission contained in the agreement does not affect the jurisdiction of the Spanish courts to hear the case as it is necessary to bring up the order issued by this Chamber dated February 7, 2019 Order No. 46 / 19 in the Appeal Roll 1344/ 17"".- As for the contractual agreement of express submission (clause S of the contract) which provides that the contract shall be interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the English Courts, Article 25- R, provides that if the parties, regardless of their domicile, have agreed that a court or courts of a Member State shall have jurisdiction over any dispute which has arisen or which may arise in connection with a particular legal relationship, such court or courts shall have jurisdiction unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive, unless otherwise agreed between the parties. However, paragraph 4 stipulates that agreements conferring jurisdiction and similar stipulations in trust documents shall have no effect if they are contrary to the provisions of Articles 15, 19 or 23, or if they exclude the jurisdiction of the courts having exclusive jurisdiction under Article 24: (1) subsequent to the commencement of the dispute; (2) which allow the consumer to bring proceedings before courts other than those indicated in this section, or, (3) which, having been concluded between a consumer and his contracting party, both domiciled or habitually resident in the same member state, confer jurisdiction on the courts of that member state, unless the law of that member state prohibits such agreements. Therefore, although Article 22 ter. 4 of the LOPJ allows the exclusion by means of an agreement of choice of court, it is not possible to exclude the jurisdiction of the courts of that member state.

The forum in favor of a foreign Court of jurisdiction established in accordance with Article 1 - domicile in Spain of the defendant and contracts concluded in consumer matters - must be understood, when this agreement is valid, and the agreement or submission that concerns us, as agreed in the contract (no evidence has been provided on this clause), is contrary to the provisions of the Regulation, given that both contracting parties (plaintiff and defendant) are not domiciled in England (nor is the agreement subsequent to the conclusion of the contract), and consequently, it cannot prevail over the provisions of the Regulation, that is, the consumer's right to sue the other contracting party before the courts of the Member State in which said party is domiciled (Spain), considerations for which, in short, the appeal must be upheld as the Spanish courts (and by extension the Court of First Instance) have jurisdiction.

SIXTH.- *Already in the recitals of Regulation 1215/2012 it is stated that "the rules of jurisdiction must present a high degree of predictability and must be based on the principle that jurisdiction is generally based on the domicile of the defendant. Jurisdiction should always be governed by this principle, except in certain very specific cases where the subject matter of the dispute or the autonomy of the parties justifies another connecting criterion" and that "With respect to legal persons, the domicile should be defined autonomously in order to increase the transparency of the common rules and avoid conflicts of jurisdiction"; so that for the determination of the applicable jurisdiction, the domicile of the contracting parties is established as an essential datum, being subject to specific definition said domicile when the defendant is a legal person, establishing in art. 63 that:*

"For the purposes of these Regulations, a company or other legal entity shall be deemed to be domiciled at the place where it is located:

a) its statutory seat;

b) its central administration, or

c) its principal place of business.

2. For Ireland, Cyprus and the United Kingdom, the expression "statutory seat" shall mean the registered office and, if there is no registered office anywhere, the place of incorporation or, in the absence of such a place, the place under the law of which the formation of the company or legal person has been effected".

In the exercise of an action of contractual nullity, the valid constitution of the legal procedural relationship imposes that the litigation is substantiated between those who are parties to the contract whose nullity is postulated; and we are here before a contract, called acquisition agreement whose object is the acquisition of fractional points, defining its object as a flexible system for booking vacations in locations distributed throughout the world. On the other hand, according to the documentation submitted, CLC RESORT MANAGEMENT LIMITED, a maintenance company, has its registered office at (33 North Quay, Douglas, Isle of Man, a company belonging to the Club Costa Group, which has its registered office in Mijas Urbanización Marina Del Sol, Bajo, where its management and administration center is located. The role and position of the company Management Limited , has been resolved by the Supreme Court in several judgments , setting that the contracts , including that of Management with the maintenance company , linked or ancillary to the main one of which the nullity is urged (main action) . CLUB LA COSTA UK PLC BRANCH in Spain with registered office in Mijas Costa; CONTINENTAL RESORT SERVICES SLU whose main partner is EUROPEAN RESORTS HOTELS both also domiciled in Urbanización Marina del Sol , Mijas - Costa , and against CLC RESORT DEVELOPMENT LTD , all belonging to the Group of companies Club La Costa , whose Administration and Management Center is located in Mijas Malaga , Urbanización Marina del Sol , Carretera Cadiz , Km 206 as well as so reflected in judgments of this Court and Chamber dated 06/04/ 2004 and , and the 6th Chamber dated 09/07/ 2012 .All this has determined that in previous resolutions we declare that the Spanish courts have jurisdiction in the aforementioned appeal 126/2018); PARADISE TRAINING S.L., domiciled in Santa Cruz de Tenerife; EUROPEAN RESOSTS & HOTELS SL, with the same address as CONTINENTAL RESORT SERVICE S.L; COSTA LEISURE INT S.L., whose address is not stated, but which is registered in the Mercantile Registry of Malaga; "CLUB LA COSTA -UK- PLC SUCURSAL EN ESPAÑA", with registered address in Edificio Solvillas III in Mijas; and "NEW JASLEY HOLDINGS S.L.S.L.", also domiciled in Marina del Sol, with "CLUB LA COSTA UK SOCIEDAD LIMITADA" as sole shareholder, and as joint administrators of "CLUB LA COSTA SOCIEDAD LIMITADA" are Mr. Eugen Miskelly and Mr. Tomas Aldrige Martín, who are also joint administrators of "CONTINENTAL RESORT SERVICE S.L", "PARADISE TRAINING S.L." and "EUROPEAN RESOSTS & HOTELS SL", from which it follows that all these companies also carry out a relevant activity on Spanish territory around the parent company "CLUB LA COSTA SOCIEDAD LIMITADA", and that the

defendant "CLUB LA COSTA -UK- PLC", as mentioned above, does not constitute an exception.

The effective registered office is the one stated in the lawsuit , since we are dealing with a group of companies , and this is expressly recognized by this Chamber in multiple resolutions among which it is worth mentioning the order No. 189 issued on May 16, 2019 in Rollo de apelación 345/ 18 where it is textually stated : "Dealing with the exercise of an action of contractual nullity, the valid constitution of the procedural legal relationship imposes that the litigation is substantiated between those who are parties to the contract whose nullity is postulated; and we are here before a contract, called purchase agreement whose object is the acquisition of fractional puintos, , defining its object as a flexible system for booking vacations in locations distributed worldwide, On the other hand, according to the documentation submitted, CLC RESRT MNAGEMENT LIMITED consists, in the Island of MAn . LEADING RESORT LIMITED at Akara Building , 24 de Castro St PO 3136 , Wickhams Cay , I Road Town Tortola .British Virgin Islands AND CLUB COSTA VACATION CLUB LIMITED , in Scotland although it belongs to the Group of companies Club La Costa , whose Administration and Management Center is located in Mijas Málaga , Urbanización Marina del Sol , Carretera Cádiz , Km 206 as stated in judgments of this Court and Chamber dated 06/04/ 2004 and , Chamber 6º dated 09/07/ 2012 ., all this has determined that in previous decisions declare that the Spanish courts have jurisdiction in the aforementioned appeal 126/2018); PARADISE TRAINING S.L., domiciled in Santa Cruz de Tenerife; EUROPEAN RESOSTS & HOTELS SL, with the same domicile as CONTINENTAL RESORT SERVICE S.L; COSTA LEISURE INT S.L., whose address is not stated, but which is registered in the Mercantile Registry of Malaga; "CLUB LA COSTA -UK- PLC SUCURSAL EN ESPAÑA", with registered address in Edificio Solvillas III de Mijas; and "NEW JASLEY HOLDINGS S.L.CLUB LA COSTA UK SOCIEDAD LIMITADA", also domiciled in Marina del Sol, and as joint administrators of "CLUB LA COSTA SOCIEDAD LIMITADA" are Mr. Eugen Miskelly and Mr. Tomas Aldrige Martín, who are also administrators of "CONTINENTAL RESORT SERVICE S.L", "PARADISE TRAINING S.L." and "EUROPEAN RESOSTS & HOTELS SL", of which "CLUB LA COSTA UK SOCIEDAD LIMITADA" is the sole shareholder.

that it is clear that all these companies also develop a relevant activity in Spanish territory around the parent company "CLUB LA COSTA SOCIEDAD LIMITADA", and that the defendant "CLUB LA COSTA -UK- PLC", as already mentioned, is not an exception.

relevant in Spanish territory, the fact is that, in accordance with the principle of ease and availability of evidence established in art. 217.7 of the LEC, the defendant "CLUB LA COSTA - UK- PLC" would not have had any difficulty in proving that, regardless of the fact that its registered office or statutory seat is formally located in London, its central administration and main center of activity is actually located in the same address, thus destroying the presumption of fact that results from the existence of this group of companies whose activity, According to the advertising documentation presented by the defendant, it would be the parent company of the group "CLUB LA COSTA SOCIEDAD LIMITADA" and, as already stated, "CLUB LA COSTA -UK- PLC" is actually represented by a power of attorney granted by "CLUB LA COSTA -UK- PLC SUCURSAL EN ESPAÑA", which prevents even checking whether its administrators are different from those of the rest of the companies referred to.".

The existence of a group of companies is also recognized in many other resolutions : Judgment Provincial Court of Valencia Section 7th Rec 359 / 2011 , S e n t AP Malaga of 6 / 04 / 2004 Appeal 507 / 2003 ; Judgment Superior Court of Justice of Andalusia No. 1060 / 2014 in labor matter in which was sued Paradise Trading SLU and other companies of Club La Costa ".

Since, therefore, the lawsuit shows evidence of relevant activity in Spanish territory, it is certain that, in accordance with the principle of ease and availability of evidence established in art. 217.7 of the LEC, the defendant "CLUB LA COSTA - UK- PLC" would not have had any difficulty in proving that, apart from the fact that its registered office or statutory seat is formally located in London, in the same domicile, as it is said, The fact that its central administration and principal place of business is actually located at the same address, thus destroying the presumption of fact resulting from the existence of this group of companies whose activity, domicile and administration is strongly linked to the one which, according to the advertising documentation presented by the defendant, would be the parent company of the group "CLUB LA COSTA SOCIEDAD LIMITADA".

SEVENTH - *Therefore, all of the above is even more relevant when in the case at hand, Club La Costa has been expressly sued through its branch in Spain, as a distributor and seller in our country of Club Costa, which carries out the economic exploitation of the Club in our country.*

regardless of where the head office is located, but rather where the branch office is located.

Now, in the case at hand, the defendant is a branch office, and in the previous decisions mentioned above, the defendants acted as the parent company and on other occasions as a branch office, since, alternatively to the two forums recognized by art.

18. 1 to which we have made reference, art. 17.1 of the same Legal Text opens another additional jurisdiction. This is the domicile of the branch or permanent or permanent establishment , recognized in art. 7. 5 of the Regulation . "Art 7. A person domiciled in a member state may be sued in another member state : 5) in the case of disputes relating to the operation of branches, agencies or any other establishment, before the court in which they are situated. This requires for its application the concurrence of two circumstances "what is meant by branch or any other procedure" and to delimit what is meant by disputes relating to the operation of the same. The CJEU has already clarified both questions in the judgment 33/78 Somafer Case. Regarding the first question, the 12th recital states " .....the concept of a branch, agency or any establishment, implies a center of operations which manifests itself on a lasting basis outwardly as an extension of a principal undertaking, with a management and materially equipped to be able to do business with third parties, so that the latter, even knowing that a legal link will eventually be established with the principal undertaking, whose registered office is abroad, are dispensed from approaching it directly and may conduct business in t h e operational center which constitutes its extension; and therefore Club La Costa UK PLC Sucursal en España meets the definition of a branch as set out in the Brussels I bis Regulation - It must also deal with disputes relating to the operation of the establishment and includes both disputes arising from the a c t u a l management of the establishment and those relating to obligations incurred by the establishment on behalf of the principal.

The claim in the present case is directed against a branch, which resorts to the additional forum provided for in Article 7.5 of the Brussels I-Bis Regulation, which may be concurrent with both the general forum of the defendant's domicile and the forum for consumer contracts, having to resort to the hierarchical system of forums, where it is established that the existence of a forum provided for matters subject to exclusive jurisdiction shall be taken into account first (Article 24), although the plaintiff does not claim that the forum of the defendant's domicile is the general forum of the defendant's domicile, or the forum in matters of consumer contracts.

The court shall be bound by the same, because in particular in view of the action brought, which is not a peaceful matter, we have to decide whether the contracts of adhesion to a timesharing club by points should be included; In the absence of this, the forum of express or tacit submission of the parties to the court will be considered (arts. 25 and 26), a criterion which is not taken into consideration either, since it has already been explained as to the nature and scope of the aforementioned clause; in the absence of this, the special forums will be considered due to the subject matter (ast 7 to 23), giving priority to the insurance, consumer and individual employment contract forums.Finally, the forum of the defendant's domicile will be considered (art 4).

The company Club Costa UK PLC Sucursal en España, acts in the contract as a branch of the company Club Costa, with domicile in Spain, as has been accredited in previous reasoning and therefore regardless of the application of the forum established in art. 18 Brussels I Bis Regulation, the jurisdiction of the Spanish Courts can be based on the alternative forum provided in art. 7. 5 Brussels Regulation. There is no doubt that the defendant entity is a branch located in Spain and has participated in the formation and execution phase of the contract, and it is irrelevant that the payments were sent to the accounts department in London or that the certificates were issued by CLC Resort Developments Limited with domicile in London, nor that the informative document states that the Company is promoting and selling the Fractional rights acting as principal on behalf of the founder domiciled in the Isle of Man, when they appear in the contracts acting directly, and it is evident the link with Spanish territory, where Club la Costa (UK) PLC has a branch, being also the place where the property on which the rights of acquisition and enjoyment object of the same are based, and where obligations in relation to their occupation arising from the same have to be fulfilled.

There is a reasonable connection for the Spanish Courts to hear a dispute over a real estate property, having similarity with a real right, for which the jurisdiction is given exclusively to the courts of the member state where the property is located (art. 24 1.R. 1215 regardless of the domicile of the parties).

From which we must conclude that the Spanish Courts have jurisdiction to hear the lawsuit that concerns us today".

FIFTH.- Regarding the merits of the case, the regulation on the regime of use in turn collected by the judgment of the Supreme Court dated 20 JUNE 2018 Decision of the Chamber will be collected beforehand. Legal regime.

In the legal regime that regulates the use by turns, and making a brief historical review of its regulation, we must mention:

1. Law 42/1998, of December 15, 1998. Law 42/1998, of December 15, 1998, regulated in Spain, for the first time, the right of timesharing of real estate, also known by the shorter - albeit inaccurate and prohibited - expression of timesharing. Prior to the enactment of Law 42/1998, the institutions of the then European Economic Community, now the European Union, had approved Directive 94/47/EC, which, in order to put an end to the frauds and abuses that were occurring in this sector, obliged the national legislators to enact certain rules to protect the purchasers of this type of rights over real estate. Law 42/1998 did not limit itself to the strict transposition of the Directive, but sought to provide the institution with a complete regulation, broader than that required by the Directive. The purpose of the Law, as indicated in its article 1, is to regulate the constitution, exercise, transfer and extinction of the right to use real estate on a timeshare basis, which grants its holder the right to enjoy, on an exclusive basis, during a specific period of each year, an accommodation that can be used independently because it has its own access to the public highway or to a common element of the building in which it is integrated, and which is permanently equipped with the appropriate furniture for this purpose, and the right to the provision of complementary services. Among the questions raised by the right of use in turn are those referring to the legal configuration of the right and the protection of the purchaser in the conclusion of the contract. As regards the legal configuration of the right, the key question of legislative policy consisted in determining whether several institutional formulas should be regulated or whether its regulation should be limited to a single one. As indicated in its preamble, Law 42/1998 "has opted for an intermediate route, consisting of the detailed regulation of a new real right of use in turn, allowing, however, the configuration of the right as a variant of seasonal leasing, to which all the provisions of the law will be applicable insofar as they do not contradict its legal nature". This is clear from art. 3 of the

The duration of the regime will be from three to fifty years, counting from the date of registration of the legal regime or from the date of registration of the completion of the work when the regime has been constituted on a property under construction. "The indication of the date on which the timeshare regime will be extinguished is one of the extremes that make up the minimum content of the contract for the transfer of timeshare rights (art. 9.1. 2 and 10 of the Law). With regard to the protection of the purchaser in the conclusion of the contract, the law regulates in detail the issues referred to the informative document -art. 8-, the content of the contract -art. 9-, the withdrawal and termination ad nutum and the termination-sanction -art. 10-, the prohibition of the payment of advances -art. 11- and the termination of linked loans -art. 12-.

2. Law 4/2012, of July 6. The new Directive 2008/122/EC, repeals the previous one, and is based on the emergence of new holiday products; it also fills gaps, extends the harmonization of the domestic laws of the states, strengthens consumer information, regulates more precisely the deadlines for exercising the right of withdrawal, insists and extends the prohibition of advance payments during the period of exercise of such right, and determines the ineffectiveness of certain financing loans in the case of withdrawal. Its incorporation into the Spanish legal system has taken place with the current regulation of Law 4/2012, of July 6, on contracts for the timeshare of properties for tourist use, acquisition of long-term holiday products, resale and exchange and tax rules.In this new regulation, it has been decided to draft a unified text, which includes both the transposition of Directive 2008/122/EC, in Title I, and the incorporation of Law 42/1998, in Titles II and III, with the adaptations required by said Directive.Law 4/2012 contemplates the regulation of four contractual figures: the contract for timeshare contracts, the contract for the acquisition of long-term holiday products, the resale contract and the exchange contract. The consumer's right of withdrawal is established without the need to state reasons and can be exercised whether the entrepreneur has provided all the pre-contractual information or not or has provided insufficient information. It is a single right that differs only in the computation. The

contractual clauses concerning the right of withdrawal and the prohibition of advance payments shall be signed separately by the consumer. The contract shall also include a standard withdrawal form in a separate document. The period of 14 days that the consumer has in all types of contracts to withdraw from the contract shall be calculated in the manner established in art. 12 of Law 4/2012. This period will start from the date of conclusion of the contract, although, as a guarantee for the purchaser, the period will not start to run if the entrepreneur has not delivered the "withdrawal form" or the "pre-contractual information" (hence the enormous importance of the presence of the signature and the date in the interest of the entrepreneur), in which case it will start to run from the time of the date of its effective delivery. However, from the moment of the conclusion of the contract, the law establishes a maximum period of one year -for absence of the form- or three months -for absence of pre-contractual information- to make the withdrawal effective.

Since the contract under analysis is formalized later, Law 42/1998 will undoubtedly be applicable to the case. - Scope of application of Law 42/1998. The objective scope of this law is the regulation of the constitution, exercise, transfer and extinction of the right of use of real estate, which attributes to its holder the right to enjoy on an exclusive basis, during a specific period of each year, an accommodation susceptible of independent use because it has its own exit to the public road or to a common element of the building, as well as the right to the provision of complementary services. This right may be constituted as a limited right in rem or as a contract for the lease of vacation real estate on a seasonal basis, for more than three of them, up to a maximum of fifty years, and in which the rents are anticipated (art. 1). It is also contemplated within the objective scope of these contracts, in general, that the contract by virtue of which any other right, real or personal, is constituted or transferred for a period of more than three years and relating to the use of one or more properties during a determined or determinable period per year, outside the present law, will be null and void, and the acquirer or assignee must be reimbursed any rents or considerations paid, and indemnified for any damages suffered (art. 1.7). The explanatory memorandum of the Law itself, in section II, states: "The restrictive scope of application has made it advisable to establish a rule to determine the regime of timeshare rights or similar to these that are constituted without conforming to the Law, since although it is evident

that these would be cases of fraud of law and should, consequently, be submitted to the solution of article 6.4 of the Civil Code, this does not seem by itself sufficient rule to avoid that, in fact, the fraud of law occurs in practice". Therefore, from the wording of the law it must be understood that the same regulates not only the rights of use in turn stricto sensu but also the "similar" ones, that is to say, any other real or personal right for a period longer than three years and relating to the use of one or more properties during a determined or determinable period per year (art. 1.7 of the Law). The law itself establishes the nullity of full nullity for those formulas that in the cases referred to in the preceding paragraph are constructed outside the law and this in order to avoid legal fraud.

Legal status of contracts. This contract refers to: 1. Letter of association to the vacation club. 2. 3. Annual management fee. This court must declare that although it is true that Law 42/1998 did not expressly regulate vacation product contracts, this does not mean that they were outside the regulation of the phenomenon, since, as we said, it regulated the use by turn or "similar", i.e., Law 42/1998, aware of the possibilities of fraud (art.1.7), took care to extend its coverage to:

"The contract by virtue of which any other right, real or personal, is constituted or transferred for a period of more than three years and relating to the use of one or more properties during a determined or determinable period per year, outside the present Law, shall be null and void, and any rents or considerations paid shall be returned to the acquirer or assignee, as well as compensation for any damages suffered".

Precisely because of this fraud attempt to circumvent the application of the aforementioned 1994 directive and Law 42/1998, Articles 12 and following of Law 4/2012 regulate long-term vacation product contracts, subjecting them to strict requirements and various forms.

The new Directive 2008/122/EC includes in its initial recitals:

"In addition, the experience gained in the application of Directive 94/47/EC has shown that some aspects that were already covered need updating or clarification to prevent products being created for the purpose of circumventing the provisions of this Directive."

But the harmonizing agreement made by Directive 2008/122, extending the regulation to holiday products in order to avoid fraud, had already been anticipated in our Law.

42/1998, since the community directives are minimum standards, our legislator created a systematic and broad regulation of timesharing.

In this sense, the explanatory memorandum of Law 42/1998 states that:

"In the end, the European Union itself came to the conviction that the problem was not so much in a theoretical legislative inadequacy as in the fact that this is a sector where the consumer is particularly unprotected, so that the appropriate thing to do was to draw up a Directive establishing a regulation of an exceptional nature and limiting, in this area, the autonomy of the will as far as advisable...

"The key question of legislative policy consisted in determining whether several institutional formulas should be regulated or whether their regulation should be limited to one, leaving the others outside the law. An intermediate route has been chosen, consisting of the detailed regulation of a new real right of use in turn, allowing, however, the configuration of the right as a variant of the seasonal lease, to which all the provisions of the Law will be applicable insofar as they do not contradict its legal nature.

"The Law, on the other hand, is not limited to the strict transposition of the Directive, but seeks to provide the institution with a complete regulation. Thus, it determines the possibility of constituting a right of a real nature, by which the right to enjoy a property during a determined period of the year is acquired; it regulates how the legal regime of timeshare is constituted on a property, and provides how the rights of withdrawal and termination established in the European Directive are to be exercised in Spain.

"It is not the first time that a community text is the origin of a more extensive internal regulation than the one required by the former and, even more so, in the case of Directives that establish minimum protection guarantees".

In view of what has been stated, we must maintain that in the contract under analysis, the periodic use of two weeks of vacation is intended, in the previously acquired shifts, in accommodations susceptible of independent use, with furniture and provision of accessory services, with payment of a significant amount for the purchase of the right and with annual maintenance expenses, with the possibility of withdrawal, resale, exchange, in short, this contract is integrated in the objective scope of regulation of art. 1 of Law 42/1998.

The contract, upon examination, does not comply with the dictates of the Law.

42/1998, since it does not include the minimum content of the contract established by the law in its

Article 9 and the subject matter of the contract is not specified, as it does not indicate an apartment but a

type of property in a Resort, Marina del Rey, that is to say, more than non-compliance

partial compliance with the law, we are faced with a systematic lack of compliance with the law.

What has been reasoned so far leads us to declare the radical nullity of the contract mentioned in this section, given that in accordance with art. 1.7 of Law 42/1998, the formalization of a contract "outside the present Law" has been intended. So clear is the defendant's illusion of Law 42/1998 that the contracts do not transcribe articles 10, 11 and 12 of Law 42/1998, nor do they mention, as required, the "nature of the legal rules applicable to the contract" (art. 9.1.6.º), so that the purchaser could not know what the legal regime of his contract was, nor the duration of the contract or the object.

In view of the foregoing and, adding to the above, the specifics of the Supreme Court, in which it states that "This Court has already established as jurisprudential doctrine in judgment 775/2015, January 15 and has reiterated in 460/2015, of September 8, that: "In the legal regime established by Law 42/1998, of December 15, on rights of use by turn of real estate for tourist use, the lack of determination in the contract of the accommodation that constitutes its object determines the nullity of the referred contract, according to the provisions of article 1.7 in relation to 9.1.3.o of the aforementioned Law ".

And in the instant case, although it is stated in the contract that the assigned property is MDR 532 in Resort: Marina del Rey previously stated that fractional points do not transfer or guarantee the right to use any assigned property. We understand that the property described below is for the sole purpose of identifying it for the purpose of sale on the date of sale in accordance with the rules and subsequent distribution to the owner.

Therefore, the Chamber considers that the requirements for the determination of the object of the contract have not been met.

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In accordance with art. 1.7 of Law 42/1998, already mentioned, it is appropriate to declare the radical nullity of the contract for not complying with the provisions of the same, which was systematically circumvented.

The Supreme Court has repeatedly ruled on this type of products, being significant the judgment of Plenary of January 16, 2017, although the same referred to the application of Law 42/98 for being contracts dated prior to the entry into force of Law 4/2012, In any case, in that judgment the Supreme Court made it clear that the same purpose had the current Law 4/2012, of July 6, on contracts for the timeshare of properties for tourist use, acquisition of long-term holiday products, resale and exchange and tax rules, which transposed Directive 2008/122/EC (RCL 1978, 2836) of the European Parliament and of the Council, of January 14, 2009, into our domestic legislation. And the Supreme Court said in that judgment that a contract in which "it was not simply acquired the provision of services (what is known as a holiday package), but the integration into a community (membership), through t h e payment of an entrance fee and periodic maintenance fees, it seems clear that it was indeed contracting a timeshare of real estate for tourist use, albeit by means of a formula that sought to avoid the application of the specific regulations on the matter (the aforementioned Law 42/1998 and Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts for the acquisition of the right to use immovable property on a timeshare basis)". In short, as stated by the Magistrate of Instance, the contract in question is null and void for contravening the provisions of articles 23.2 and 30 due to the absolute lack of determination of its object.

On the other hand, it is clear that the condition of consumer for the purposes of the legislation of timeshare of real estate. This court has declared in judgment 16/2017, of January 16:

"Article 1.5 of the repealed Law 42/1998 (a provision equivalent to the new art. 23.5 of the current Law) limited itself to defining the concept of transferor but did not define the acquirer. On the contrary, art. 2 of Directive 94/47/EC did contain a definition of acquirer, which brought the concept of acquirer closer to that of consumer (which has been made clear in the

Directive 2008/122/EC, which in its own heading mentions consumers), by stating that, for the purposes of the Directive, the following definitions shall apply: "Purchaser: any natural person to whom, acting under contracts falling within the scope of this Directive, for purposes which may be considered as not being within the scope of his professional activity, the right which is the subject matter of the contract is transferred, or who is the recipient of the creation of the right which is the subject matter of the contract".

"In turn, art. 2.1 f of Directive 2008/122/EC, on timeshare contracts, contains the following definition:

"Consumer: any natural person acting for purposes unrelated to his economic activity, business, trade or profession".

"According to art. 3 of the Consolidated Text of the General Law for the Defense of Consumers and Users, approved by Royal Legislative Decree 1/2007, of November 16 (hereinafter TRLGCU), in the wording in force when the disputed contracts were signed, "consumers or users are natural or legal persons acting outside a business or professional activity".

"This concept comes from the definitions contained in the directives whose transposition laws are recast in the TRLGCU and also in some other directives whose transposition laws have been left out of the 2007 text. As for the directives whose transposition has been recast by RD Legislative 1/2007, Directive 85/577 (off-premises sales, art. 2), Directive 93/13 (unfair terms, art. 2.b), Directive 97/7 (distance contracts, art. 2.2) and Directive 99/44 (guarantees in consumer sales, art. 1.2.a) coincide in that the consumer is "any natural person who acts for purposes other than his professional activity", with slight variations in the wording between them.

"As for the directives whose transpositions are outside the TRLGCU, the idea is invariably reiterated, as they all allude to the "natural person" (no consumer directive contemplates legal persons in its scope) acting with a purpose or aim "outside his trade or profession" (Directive 98/6 on price indication, art. 2.e; Directive 2002/65 on distance marketing of financial services, art.

2.d; Directive 2008/48 on consumer credit, art. 1.2.a) or "to his trade, business or profession" (Directive 2000/31 on electronic commerce, art. 2.e) or to "his trade, business, craft or profession" (Directive 2005/29 on unfair commercial practices, art. 2.a). As we have already seen, this last mention is the

The same as used in art. 2.f of Directive 2008/122 on timeshare contracts, which replaced Directive 94/47/EC.

"In other international or community rules, which are or have been in force in Spain, a similar notion is adopted. Thus, EU Council Regulation 44/2001 of 22 December 2000, on jurisdiction in civil and commercial matters, introduced a special forum of jurisdiction in its art. 15.1 for "contracts concluded by a person, the consumer, for a use which may be considered as outside his trade or profession". A concept reiterated by Art. 17.1 of Regulation (EU) No. 1215/2012 of 12 December 2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In turn, Regulation 593/2008, of 17 June, of the European Parliament and of the Council, on the law applicable to contractual obligations also contemplates in its Art. 6 "consumer contracts", understood as those concluded "by a natural person for a purpose which can be considered as being outside his trade or profession (the consumer) with another person (the professional) acting in the exercise of his trade or profession"".

The profit motive does not necessarily exclude a natural person's status as a consumer.

This chamber has stated in judgment 16/2017, January 16 :

"In relation to the disputed controversy, starting from the above concept of consumer or user as a person acting outside a business or professional activity, and given that the contract provides for the possibility of resale, the question arises whether it is possible to act, outside a business or professional activity, with the intention of making a profit. Community case law has considered that this profit-making intention should not be an exclusion criterion for the application of the notion of consumer, for example in the STJCE 10 April 2008 (Hamilton case), which ruled on the requirements of the right of withdrawal in a case of a credit agreement to finance the acquisition of shares in a real estate investment fund; or in the STJCE 25 October 2005 (Schulte case), on an investment contract.

"Moreover, the wording of art. 3 TRLGCU refers to the action in a field outside a business activity in which the operation is framed, not to the business activity.

specific to the customer or acquirer (interpretation reinforced by the CJEU of 3 September 2015, case C-110/14).

"In turn, the reform of the aforementioned art. 3 TRLGCU by Law 3/2014, of March 27, although not directly applicable to the case because of the date on which the contract was concluded, can shed light on the issue. Indeed, unlike what happens with the EU directives that only refer to natural persons, after said reform a distinction continues to be made between consumer natural person and consumer legal person, but it is added that the profit motive is an excluding circumstance only in the second of the cases. In other words, a negative requirement is introduced only with respect to legal persons, from which it can be deduced that a natural person acting outside a business activity is a consumer, even if he or she is a profit-making person.

"However, without departing from such regulation, it could be considered that the profit motive of the individual consumer should refer to the specific transaction in which it takes place, since if the consumer can act with the intention of enriching himself, the limit will be in those cases in which he performs these activities regularly (buying to immediately resell successively real estate, shares, etc.), since if he performs several of these activities assiduously in a short period of time, it could be considered that he performs a business or professional activity with such acts, given that the regularity is one of the characteristics that characterizes the quality of the transaction.), since if he carries out several of these operations assiduously in a short period of time, it could be considered that, with such acts, he carries out a business or professional activity, given that regularity is one of the characteristics of the legal quality of entrepreneur, as established in art. 1.1.º CCom ".

From this point of view, there is no evidence that the plaintiff habitually carried out this type of operations, so the mere possibility that they could profit from the transfer or resale of their rights does not exclude their status as consumers. The fact that other weeks were contracted only implies the decision to invest in said product, but not that they were professionally engaged in its purchase and sale.

SIXTH.- Since the declaration of nullity of the contract is appropriate, it is necessary to study its effects and the amounts to be refunded.

Supreme Court Ruling No. 378/2018 of June 20, among others, and Ruling No. 518/ 19 of October 4, 2019, applies the jurisprudential criterion according to which, being true that, in accordance with Article 1.7 of Law 42/1998, in case of full nullity

However, the interpretation of this rule and its application to the case cannot be alien to the provisions of Article 3 CC in the sense that such interpretation must be made taking into account fundamentally its "spirit and purpose". In the case of the aforementioned article 1.7, the aim is to leave the contracting party in good faith who is surprised by the content of a contract -usually of adhesion- that does not comply with the legal requirements, but this has not happened in the present case in which the plaintiffs have been able to enjoy for some years the accommodations that the contract offered them, so that the reimbursement of amounts paid should not be total but proportional to the time that should remain in force taking into account the maximum legal duration of fifty years".

It is true that Article 1.7 of Law 42/1998 establishes that, in the event of full nullity, the purchaser shall be reimbursed the totality of the amounts paid. However, the interpretation of this rule and its application to the case cannot be alien to the provisions of Article 3 CC in the sense that such interpretation must be made taking into account its "spirit and purpose". In the case of the aforementioned article 1.7, the aim is to leave the contracting party in good faith who is surprised by the content of a contract -usually of adhesion- that does not comply with the legal requirements, but this has not happened in the present case in which the plaintiffs have been able to enjoy the accommodation offered by the contract for some years, so that the refund of amounts paid should not be total but proportional to the time that should remain in force taking into account the maximum legal duration of fifty years.

Consequently, the amount paid (30,303 pounds sterling) must be reimbursed by the defendant in proportion to the amount corresponding to the years not enjoyed, based on the attribution of a contractual duration of 50 years, with the application of legal interest from the date of filing of the lawsuit, thus substantially accepting the main requests of the "plea" of the lawsuit in terms of the contracts in question. We calculate the years of use, starting from the date of first occupancy that appears in the contract (2011), until the date of the filing of the lawsuit (2017), which leads us to understand that they have enjoyed 7 years, so it is

the defendant must be ordered to pay 26,061 pounds sterling. Consequently, the Supreme Court establishes that of the amount paid (30,303 ,€ in our case), the amount corresponding proportionally to the years not enjoyed must be reimbursed by the defendants, based on the attribution of a contractual duration of 50 years, with the application of the legal interest from the date of filing of the lawsuit.

With regard to the return of the double of the amount paid, equivalent to double the amount paid on account in the period of time for withdrawal as provided for in the contract and in art. 11 of Law 42/1998, since the claim for double the amount paid in full is compatible with the nullity action, since the aforementioned art. 11 refers to the ordinary withdrawal period (10 days) or to the special one in the event that the purchasers have an interest in the termination of the contract (3 months). There are countless judgments of our High Court that condemn the payment of duplicate amounts of the anticipated price and at the same time declare the nullity of the contract of use. Being art. 11 LATBI a prohibitive rule, the act of advance payment that it proscribes is 'null and void' and, therefore, absolutely and totally ineffective, with no possibility of cure or confirmation, and the (civil) sanction established by said precept of duplicate payment of the unduly advanced amount must be imposed. In the present case, in view of the above, it is reasonable to presume that such payments have been made on the date stated in the contract and, therefore, to consider the infringement of Art. 11 LATBI.

The defendant nor does it that will provide th information prior required by the accredit e

legislation, nor does it question that the payments were made, nor the time at which they were made.

carried out. This implies a violation of the provisions of Articles 9 and 11 of the Law.

42/1998, which entails applying the sanction of refunding the double of such amounts to the plaintiff, and therefore the claim must be upheld, having accredited the payment in the amount of 8,203.00 euros, on 14 / 10 / 2011, that is 11 days after the conclusion of the contract. As already stated, the present contract omits almost all the provisions of art. 9, in particular, the one referring to the determination of the object (art. 9. 1.3º) nor the allusions to the governing deed (art. 9 1.1º) nor to the maintenance fees (art. 9.1.5º) there is no mandatory document registered in the Registry with the mentions of art. 8, and nevertheless the plaintiff was made to pay a part of the price.

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of the contract within the termination and withdrawal period of 3 months and 10 days. by giving the circumstances specified in Art. 10, No. 2 .

Therefore, without prejudice to the radical nullity of the contract, art. 11 of Law 42/1998 is considered applicable, requiring the return of the advances as they are considered proscribed and as a legal sanction for breach of contract, which is applicable even when the party opts for the performance of the contract, and even more so when the contract is declared null and void due to systematic breach of contractual obligations by the promoter that incur in fraud of law (judgment no. 633/2016 of October 25).

The SSTS of May 11, 2016 and No. 122/2016, of March 3 (Rec. 2043/13), state that: in plenary judgment no. 627/2015, of November 20, has established when interpreting art. 11 of Law 42/1998 that the prohibition contained therein, which after the new Law 4/2012 is expressly extended to the delivery made to third parties, must be understood with the same scope under the validity of the 1998 Law, since "it is sufficient to take into account that the prohibition of advances during the withdrawal period finds its justification in the interest of the legislator to simplify the exercise of the right, so that such withdrawal takes effect by the contracting party's own manifestation of will without the need to recover any amounts paid, thus eliminating the risk of such recovery not taking place or being delayed. ". Article 9.1 of Directive 2008/122/EC of 14 December 2008, of 14 December 2008, provides that the contracting party may withdraw from the contract without the need to recover any sums paid.

January, which repeals the previous 1994/47/EC, provides that "with regard to timeshare, long-term holiday product and exchange contracts, Member States shall ensure that the payment of advances, the provision of guarantees, the reservation of money on accounts, the explicit acknowledgement of debt or any other consideration to the trader or a third party by the consumer before the end of the withdrawal period is prohibited, the reservation of money on accounts, the explicit acknowledgement of debt or any other consideration to the trader or a third party by the consumer before the end of the withdrawal period in accordance with the provisions of Article 6".

The prohibition of advance payments "in favor of the employer or a third party" does not represent a novelty with respect to the previous regulation of the matter in the 1998 Law and none of this is stated in its Preamble - as would be logical if it were a substantial modification - but simply resolves the doubts that had arisen in p r a c t i c e on the matter, which may be considered unjustified if we take into account that the correct interpretation of Article 11 of the 1998 Law, if we consider that the correct interpretation of Article 11 of the 1998 Law, if we consider that it is a substantial modification of the 1998 Law, is not a new one, but rather a new one, which is not a new one.

The reason for the prohibition was that the prohibition affected both the receipt of amounts by the transferor and by a third party designated by the transferor.

On the other hand, art. 11.1 LATBI does not condition the payment of the advance price within the three-month period foreseen in order to be able to exercise the termination action provided in art. 10 to the occurrence of such causes, it simply establishes that the payment of any advance payment is prohibited before the expiration of the period for exercising the right of withdrawal or while the right of termination is available, so that while such right is available, therefore during the three months following the conclusion of the contract, no advance payments may be required and, in this sense the STS of May 24, 2018 (no. 302/2018, rec. 3323/2016) points out that: " By application of the provisions of art. 11 of Law 42/1998 , insofar as it prohibits advance payments while the purchaser has the power of termination, without prejudice to the payment of the deferred price being guaranteed, it is also appropriate to condemn the defendant to the return of an amount equal to the amount reached by said advance payments, insofar as section 2 of said rule orders the duplicate return of the amount delivered, being so that said amount is already included in the obligation to return what was received as a consequence of the nullity of the contract that is declared g>.

In accordance with the jurisprudential doctrine set forth above, legal interest should be paid from the date of filing of the claim and not from the date of each payment, as the plaintiffs claim, since otherwise the proportional deduction should have been applied to each payment for the purpose of calculating interest.

SEVENTH.- As for the costs caused in this appeal, the appeal being upheld and in accordance with the provisions of article 398 of the LEC, there is no express imposition of the same.

The appellate appeal has been upheld, with no change in the costs of the appeal, which were imposed on the plaintiff, since the main claim for nullity of the contract has been accepted in this instance, reducing only the amount of compensation. In a small amount with respect to what was claimed.

Pursuant to section 8 of the Fifteenth Additional Provision of the Organic Law of the Judiciary, the deposit made at the time of appeal shall be used as provided by law.

In view of the aforementioned legal precepts and others of general and pertinent application,

WE FAIL

Partially upholding the appeal filed by the attorney Ms. María Rosario Palomino Martín on behalf of Mr. [redacted], we revoke the appealed judgment issued on October 23, 2017 in the Ordinary Trial proceedings of the Court of !º Instance No. 1 of Fuengirola in its place, we must partially uphold the claim filed by said appellant against CLUB LA COSTA LEISURE LTD represented by the attorney Mr. José Luis Rey Val. and, consequently:

A.).- The nullity of the contract dated 10/13/2011 with reference number 650964 , signed between Mr. [redacted] and Club la Costa called Club de Propietarios de Propiedad Fraccional . Application and Purchase Contract for not complying with the minimum content required by Law 42/1998, declaring the same indeterminate and contrary to the law, and null and void for being contrary to the law.

B) - We must condemn and we condemn Club La Costa (UK) PLC Sucursal en España to the refund of all the amounts paid by Mr. [redacted] at the m o m e n t of the contracting minus the proportional amount corresponding to the years of use, which amounts to a total of TWENTY SIX THOUSAND STERLING POUNDS 26,061 pounds sterling. 26,061 pounds sterling, plus the corresponding interest since the judicial claim.

C) - We must and we do condemn Club La Costa (UK) PLC Sucursal en Espña to pay to the plaintiff Mr. [redacted] the double of the anticipated amount of the contract dated

13/10/2011, No. 650964 during the legal period of withdrawal anticipated amount amounting to the sum of 8. 203 ,00 pounds sterling) eight thousand two hundred and three euros .

D) The costs incurred in the first instance are imposed on the defendant without express imposition of those incurred in this appeal.

Thus, by this, our Judgment, definitively judging, we pronounce, order and sign it.

E/

PUBLICATION: The above resolution was read and published by the Honorable Magistrate - Judge Rapporteur, and was held in Public Hearing. I attest.