4-2013
July 2013

1. CASE COMMENTARIES

JUDGMENT dated July 11, 2013 rendered by Alicante Commercial Court no. 1

Arts. 116.4, 118.3 and 123 LC.-- Quorum for convening a creditors' meeting. Preferred creditors that have signed up to an arrangement form part of the quorum for convening the meeting.

Commentary:

Company Marina de Poniente, S.A. ("Marina") petitioned for involuntary insolvency in May 2012. That company's liabilities comprised debts with financial institutions (which were preferred claims); the port authorities (the ordinary claim of those authorities accounted for 70% of the ordinary liabilities) and ordinary suppliers.

The majority of the ordinary liabilities were debts with the port authority, a public body with which, as a result of the existing discrepancies over calculating the occupancy and activity fees agreed on in the concession instrument, it had been involved in a great many lawsuits for many years.

Indeed, the number of lawsuits involving the port authority was what led the authority to announce that they would be voting against the continuity arrangement submitted by Marina, consisting of the payment of the whole debt over a 5-year period.

Given this state of affairs, negotiations started with the financial institutions that held preferred claims that tripled the port authority's claim for them to sign up to the arrangement by public deed rather than by appearing at the Creditors' Meeting and voting on the arrangement. The reason they were asked to sign up was so that it could be argued, in the event the port authority failed to attend the Creditors' Meeting, as indeed happened, that the preferred claims that had signed up to the arrangement formed part of the "ordinary liabilities" for the purposes of the quorum for convening the meeting (remember that the port authority accounted for 70% of the ordinary liabilities).

On June 7, a Creditors' Meeting was held and the port authority did indeed fail to attend, at which it was recorded that the financial institutions had signed up. The judge decided to hold that the meeting had been validly convened, despite noting "the existing doubts regarding the calculation of the liabilities required to deem the Meeting to have been validly convened".

The government lawyer, acting on behalf of the port authority, challenged the court approval of the arrangement on the ground of a statutory breach in the convening and holding of the Creditors' Meeting. The government lawyer contended that the provisions of arts. 116.4 t and 123.1 LC had been breached by incorrectly applying the provisions of arts. 118.3 and 124 LC.

Although the port authority withdrew the challenge, after an overall agreement had been reached, when it came to rendering a judgment approving the arrangement, the commercial court ruled on the challenge made and concluded that the meeting had been validly convened, and the preferred creditors who had signed up were computed for all purposes.

The court held that art. 116.4 LC allows for an "alternative interpretation", having regard to the following arguments:

- Holding that the preferred creditors who have signed up were not present for the purposes of the quorum is a restrictive interpretation of rights that is not in keeping with the principle of favor conveni underpinning the insolvency legislation;

- The treatment dispensed to preferred creditors who have signed up (computed for quorum purposes) is different from that of those attending the Meeting (who have no effect on the quorum for convening the meeting);

- The lawmakers' intention is to encourage the securing of an arrangement in writing, whereby the quorum for convening a meeting raises no problems given that what matters is the calculation of the majority of votes "in which the ordinary liabilities of the preferred creditors voting in favor of the proposal is deemed to be included".

The judgment concludes by noting the view taken by the Barcelona provincial appellate court judgment dated July 5, 2011, I which the Meeting was not found to have been incorrectly convened even though the preferred creditors that signed up have been factored in.

DECISION dated June 14, 2013 rendered by Madrid Commercial Court no. 2

Arts. 21, 25 and 25 bis LC.—Petition for insolvency and joinder with another insolvency proceeding ordered before reform of the Insolvency Law (*Ley Concursal* or 'LC'), seeking adoption of injunctive relief on ex parte basis.—Given the absolute relationship between the company making the petition and the company already in an insolvency proceeding, the court held that both insolvency proceedings were "connected", and that it had satisfied itself that it had jurisdiction to entertain the insolvency proceeding on the company making the petition.—Since the first insolvency order was made before the entry into force of Law 38/2011, there was no need to restrict the definition of a "group of companies" to the definition of "control" provided in art. 42.1 of the Commercial Code.—Definition of "group of companies" before Law 38/2011: "decision-making unit".-- Adoption of injunctive relief on ex parte basis due to the imminent partial maturity of syndicated credit facility for reasons of urgency in the interests of the insolvent party and *pars conditio creditorum* principle.—Measures adopted: Individual enforcements put on hold and their commencement stayed, and creditors prevented from "cash pooling" or netting against the insolvent party's accounts.

Commentary:

Bami Newco, S.A. ("Bami") petitioned for voluntary insolvency, asking for the court conducting the insolvency proceeding on company Grupo Inmobiliario Tremón, S.A. ("Grupo Tremón") to have jurisdiction to entertain the proceeding, in view of the joint nature of decision-making between the Chairman of the Board of Directors (and shareholder) of Bami and the Chairman of Grupo Tremón.

Given the absolute relationship between Bami and Grupo Tremón in the way in which corporate decisions were actually made, the court held that the two insolvency proceedings were "connected."

When assessing its jurisdiction to make an insolvency order on Bami and conduct it in conjunction with the proceeding on Grupo Tremón, the court noted that the definition of "group of companies" applicable to the case was that determined in Royal Decree Law 3/2009, since the insolvency proceeding on Grupo Tremón –with which it sought a joinder– was instituted while that law was in force and, as a result, additional provision number six introduced by Law 38/2011, reforming the Insolvency Law, read in conjunction with art. 42.1 of the Commercial Code for the definition of a "group of companies," does not apply.

The court cited case law on the interpretation of the definition of "group of companies" before the entry into force of Law 38/2011, as being the applicable interpretation in the case at hand, and pointed out that the definition is not a narrow one, focusing on the direct "control" of corporate management, but rather also encompasses circumstances in which equally effective indirect control is exerted.

In this case, the court held it was sufficient for there to be direct or indirect control over the voting rights or managing body of the petitioning company to determine the existence of a group of companies. Therefore, given the powers of control held by the Chairman of Grupo Tremón over the decisions of the Chairman of the Board of Directors of Bami (to the extent that these decisions had to be adopted jointly), the court held that the two entities clearly form part of a group of companies for the purposes of arts. 25 and 25 bis LC, and therefore it could conduct the insolvency proceedings together and had satisfied itself that it had jurisdiction to entertain the insolvency proceeding on Bami, also by reason of the synergies and principles of joint action at both companies.

With respect to the application for injunctive relief made by Bami in view of the imminent partial maturity of the syndicated loan it had with several financial institutions, the court adopted the urgent injunctive relief on an ex parte basis to stay enforcement of any security by the financial institutions, as well as declaring that no individual enforcements and settlements of accounts, cash pooling or netting with respect to the accounts held by the insolvent party were allowed.

Hermosilla, 3 - 28001 Madrid - Spain
Telephone +34 91 514 52 00 - Fax +34 91 399 24 08

2. HEADNOTES

Court of Justice of the European Union

JUDGMENT dated June 13, 2013 rendered by the Court of Justice of the European Union

Art. 199.1.g) Directive 2006/112.— VAT reverse charge mechanism in the sale of immoveable property in an insolvency proceeding.-- Art. 199.1.g) authorizes member states to provide that a person liable for payment of VAT is the taxable person to whom supplies of immoveable property sold by a judgment debtor in a "*compulsory sale procedure*" are made.—The following doubts were raised: (i) the application of the article to insolvency proceedings; and (ii) whether the article refers only to transfers for liquidation purposes or carried out during the liquidation phase of an insolvency proceeding, or whether it extends to any transfer carried out under an insolvency proceeding.—Although this article is an exception to the general principle, the lawmakers' intention was not to limit its application to processes to liquidate a debtor's assets in the strict sense, but rather for it to encompass a broader scope. The court concluded that the article ought to be interpreted to the effect that a "*compulsory sale procedure*" encompasses any sale of immoveable property carried out not only within the framework of a process to liquidate assets, but rather also within the context of an insolvency proceeding, before such a liquidation process, provided that type of sale is necessary to satisfy creditors or recommence the economic or professional activity of the debtor.

Supreme Court

JUDGMENT dated February 12, 2013 rendered by the Supreme Court, Civil Chamber

Art. 167.2 LC.—Classification as fault-based insolvency following a breach of arrangement: Cassation appeal: The appellant disputed the decision of the lower court and the decision on the appeal that had classified the insolvency as fault-based on grounds other than a breach of the arrangement. The appellant considered that, after an arrangement has been approved that was subsequently breached, the insolvency cannot be classed as fault-based on any grounds or reasons other than a breach of the arrangement.-- Dismissed: The Supreme Court clarified that the Insolvency Law does not determine the scope of the examination to be carried out in the assessment section where this takes place following a breach of a "non-onerous" arrangement, in this case an arrangement for third-party assumption of business and debt.-- Conclusion: the scope of an assessment section in the event of a breach of an arrangement of this nature is not limited or subject to restrictions. The assessment may be based on any of the statutory grounds or reasons regulated in arts. 164 and 165 LC.—Even where an arrangement is held to constitute a "settlement" between the debtor and its creditors, a breach thereof stops the effects of such a settlement.-- Article 172 bis LC: the liability of directors to make up for an insolvency shortfall will be in line with their participation in the conduct giving rise to the total or partial non-payment of claims.

JUDGMENT dated February 18, 2013 rendered by the Supreme Court, Civil Chamber

Article 58 LC.—Offset carried out by the State Tax Agency (AEAT), following an insolvency order, based on a modification of the VAT base for several invoices.-- The AEAT filed a cassation appeal in respect of a breach of art. 58 LC against the provincial appellate court judgment holding to be unjustified the offset carried out by the AEAT after the insolvency order as a result of the rectification for VAT purposes of the tax base for several invoices issued by various creditors of the insolvent party.—The Supreme Court upheld the AEAT's appeal by holding that modification of the tax base for the invoices does not give rise an "offset" but rather a settlement of VAT for the relevant period – before the insolvency order – consisting of a recalculation of the tax liability for that period. The VAT assessment issued by the AEAT to the insolvent party, with a reduction to input VAT, constitutes a modification of the VAT base for the periods concerned, as provided for in the tax legislation.—Thus, by reference to the creation and assessment of the tax obligation, the assessment falls outside the restriction on offsets contained in art. 58 LC because it is an update of the assessment of the tax liability, as provided for in the tax legislation, and one that, although based on an event occurring after the insolvency order, affects the determination of the tax base for a particular earlier period.

JUDGMENT dated April 9, 2013 rendered by the Supreme Court, Civil Chamber

Arts. 59.1 and 84.2 5 LC.—Assessment of surcharges and interest generated by social security contributions falling due after an insolvency order.—While the court conducting the insolvency proceeding and the Provincial Appellate Court held that social security contributions falling due after the insolvency order were post-insolvency order claims, this was not the case with the related surcharges and interest.-- The Spanish social security authorities appealed against that decision to the Supreme Court, which upheld the appeal by holding that post-insolvency order claims generate interest because they are not affected by the stay on accrual of interest provided for in art. 59.1 LC, since the location of that provision in the Insolvency Law implies that the stay only applies to pre-insolvency order claims.—The Supreme Court concluded that because the social security contributions (classed as post-insolvency order clams) had not been paid, that post-insolvency order claim generates both interest and surcharges, and both must therefore be classified as post-insolvency order claims under the rule that any ancillary debt is assessed in the same way as the principal debt (this Judgment reiterates the first supreme court judgment on the same issue, see Judgment dated March 19, 2013 rendered by Chamber I of the Supreme Court, included in our last newsletter].

JUDGMENT dated May 23, 2013 rendered by the Supreme Court, Civil Chamber

Arts. 73 LEC and 86 ter LOPJ.—A creditor filed a claim with a lower court to have a company in liquidation and its director held jointly and severally liable for payment of a certain sum.—The defendants challenged the claim on the ground of an incorrect joinder of actions – for debt recovery and corporate liability – alleging that the commercial court did not have jurisdiction to entertain the debt recovery action.—The creditor's claim was upheld at first and second instance, and the commercial court was held to have jurisdiction.—The Supreme Court confirmed its jurisdiction. It deemed the joinder of actions to be applicable based on: (i) the fact that one issue had to be ruled on before the other, because the success of the action against the management depended on the action

Hermosilla, 3 - 28001 Madrid - Spain
Telephone +34 91 514 52 00 - Fax +34 91 399 24 08

against the company; (ii) the close relationship between the actions in light of their grounds – the breach of company obligations – and their purpose – to seek indemnification for the claimant -; and (iii) the application by analogy of the LEC, which would allow a joinder in cases of actions that have to be ruled on before another between courts of first instance and commercial courts. Moreover, it argued that the commercial court has jurisdiction since: (i) it has jurisdiction to hear the more specific action, the action against the director; (ii) the conferral of jurisdiction on civil courts is residual in nature; (iii) it is more in line with the general rules governing the distribution of jurisdiction, given that the debt recovery action is taken against a corporate enterprise.

JUDGMENT dated May 24, 2013 rendered by Supreme Court, Civil Chamber

Art. 164.1 LC.—Fault-based insolvency assessment.—The court conducting the insolvency proceeding held that the insolvency was fault-based and singled out the corporate director as the person affected by such an assessment, finding also that the company the director introduced as the creditor of a non-existent claim was an accomplice.—The first appeal was dismissed by the provincial appellate court and a subsequent cassation appeal was lodged with the Supreme Court.—The Supreme Court dismissed the cassation appeal, indicating that, in view of the importance of annual budgets at corporate enterprises, if the directors disregard those budgets and incur greater expenses than were originally calculated, this is an expression of serious negligence which, to the extent it has contributed to bringing about or worsening the company's insolvency, falls within the case set out in art. 164.1 LC.—A person who spends beyond his means does not conduct himself with the diligence of an orderly businessman, but rather with serious negligence, especially since he was aware of the budgeted amounts because he himself had calculated them beforehand.—The substandard management by the directors that the director affected by the fault-based assessment replaced does not "cleanse" the management conducted by himself and subsequent directors, but rather, at most, means that the anomaly appears to be usual and must be urgently remedied by the director affected by the assessment.

Provincial Appellate Courts

JUDGMENT dated April 17, 2013 rendered by Coruña Provincial Appellate Court

Commercial registry's refusal to register a deed for the dissolution, liquidation and extinguishment of a company without any assets, creditors, or activity in connection with business operations, where the shareholder owning 50% of that company had objected and claimed payment in court.—The commercial court ordered the dissolution of a company by reason of deadlock in the managing body because it was prevented from adopting decisions by a rift between two shareholder groups, each owning 50% of the company's shares.—Following yet another failure by the shareholders to adopt a resolution during the liquidation of the company, the provincial appellate court rendered a judgment determining that the financial liquidation balance sheet and the submitted distribution plan for the liquidation proceeds must be approved by the court-appointed liquidator. This decision revoked the lower court's decision that had prevented that approval until the lawsuit brought by one of the shareholders to claim payment (deposited at a bank) had been definitively settled.—The commercial registry refused to register the deed for the dissolution, liquidation and extinguishment of the company filed by the court-appointed liquidator arguing that it had irremediable defects.—The company challenged the commercial registry's negative assessment in court, the commercial court found in its

favor, rendered the assessment void and ordered registration of that deed. The commercial registry lodged an appeal against that decision arguing that the liquidation transactions had not been completed, nor had the outstanding debts been satisfied, the claims had not been paid into court and the shareholders' meeting had not approved the final balance sheet or the report and distribution plan for the liquidation proceeds under articles 118 and 121 of the Limited Liability Companies Law.—The provincial appellate court dismissed the appeal after finding that it had to be registered, because: (i) the sought registration does not produce effects against third parties because there are no debts with third parties or with public authorities; (ii) the company –whose corporate purpose was to use a sold building for business purposes– did not have any type of activity in connection with business operations; and (iii) it did not generate a loss for the shareholders themselves, because the liquidation transactions were approved, not at a shareholders' meeting which was actually prevented by the rift between two groups of shareholders, each owning 50%, but by a nonappealable court judgment, all the more so when a more than conservative sum had been paid into court in respect of the potential costs of the lawsuit brought by the shareholder that blocked the company's resolutions.—The provincial appellate court said that there would be an inadmissible delay if the company's liquidation transactions were postponed because the creditor shareholder claimed payment in court for a contingent debt that had been paid into court anyway, as the court proceeding could take years, especially where the claimed payment is such a patently small amount or the other parties are compelled to accept an unfair transaction to avoid those losses.

DECISION dated February 6, 2013 rendered by Barcelona Provincial Appellate Court

Articles 43 and 155.3 LC and article 1,205 CC.—Contractual subrogation without the creditor's consent.—The commercial court authorized under article 43 LC the sale of the insolvent party's production unit with subrogation to a number of employment contracts, to the finance lease agreements on equipment used in the business activity and to the agreements for unperformed works in which the insolvency debtor was a party.—The lessor, which had earlier stated its objection to the subrogation due to the economic risk presumed to be associated with the acquirer, appealed against that decision arguing that its consent was an indispensable requirement for the subrogation to be operative in accordance with article 1,205 CC.—The provincial appellate court dismissed the lessor's appeal by holding that, as article 155.3 LC confers on the court conducting the insolvency proceeding the power to authorize the sale with subsistence of the encumbrance and subrogation of the acquirer in respect of the debtor's obligation, it must necessarily be construed that the subrogation is imposed by a court decision, and the creditor's consent is not needed as it is replaced by a prior hearing, thereby introducing in the area of insolvency proceedings an exception to article 1.205 CC.—Finance leases must be held to fall within the scope of article 155.3 LC as they have the same reason.

Commercial Courts

Approval of refinancing agreements

DECISION dated April 4, 2012 rendered by Logroño Commercial Court

Additional provision number four LC.—Court approval of a refinancing agreement.--Terms: (1) Deferral: 2-year grace period for repayment of the principal with the payment of interest, 40% of the principal of the debt to be paid over 5 years after the end of the grace

period and the remaining 60% of the debt over 8 years; (2) New financing: a new discounting facility amounting to €1.5 million, in which the financial institutions participate in proportion to their debt.-- Security: mortgage on real property and security interest in trademarks.—Valuation of the disproportionate sacrifice for dissenting institutions: did not prevail: the deferral was stipulated in two tranches, interest on the debt was to continue to be paid and the dissenting institutions did not represent even 5% of the group's debt.—Extension of the arrangement to the dissenting financial institutions.—Enforcement by the dissenting financial institutions stayed: individual enforcement of an unsecured debt initiated by one of the dissenting financial institutions was stopped, but only for the deferral period of three years even if the deferral set out in the refinancing agreement is longer.

DECISION dated June 5, 2012 rendered by Barcelona Commercial Court number 6

Additional provision number four LC.-- Court approval of a refinancing agreement.—Minimum terms: extension of the amount of credit available (entry of fresh money) or a reorganization of the debtor's liabilities, without preventing a combination of both measures.-- Quorum: only 75% of the liabilities to financial institutions needed without needing a double quorum, meaning 2/3 of the liabilities referred to in article 71.6 LC.—Valuation of the disproportionate sacrifice for dissenting institutions: the factors to be looked at are the financial and net worth position of each creditor, the amount of their claim, the existence of encumbrances on all of their debtor's assets that can be realized and the provision of security to the creditors affected by the agreement.—Definition of deferral: extending the maturity date and adapting the previously determined payment schedule without extending the maturity date are both deferrals.—Keeping the working capital facilities for three years and providing fresh working capital: equal shares for all the financial institutions in the company's financing.—Extension of the refinancing agreement to three dissenting institutions: the deferral period was extended but no extension regarding the issue of new working capital financing facilities, because it was held to be a disproportionate sacrifice for the nonsigning institutions.- Stayed enforcements: it was decided to stay enforcement processes during the agreed deferral period.

DECISION dated November 20, 2012 rendered by Seville Commercial Court number 1

Additional provision number four LC.—Court approval of a refinancing agreement: collective or joined applications by companies in a business group: 92.28% of the bank debt signed up to it, meaning that 75.72% of the group's total debt, excluding intercompany debt, signed up.—Refinancing structured in two tranches: a Tranche A to partially refinance bank debt and a Tranche B to finance commercial debt, the refinancing costs and taxes and overhead cash requirements: mortgages on real property, security interests in movable property and pledges.—Existence of a dissenting institution. The refinancing agreement which involved a 2-year grace period and a 15-year deferral did not imply a disproportionate sacrifice for the dissenting financial institution, although the effects of the deferral would only be obligatory for unsecured debt. Continuation of the interruption to the enforcement trial initiated by a dissenting financial institution in relation to the unsecured portion of the debt.—Independent expert: gave a favorable report on the agreement and brought matters to light which were not major enough to alter the expert's opinion.

DECISION dated June 28, 2013 rendered by Barcelona Commercial Court number 5

Additional provision number four LC.—Court approval of a refinancing agreement.—Application for court approval of a refinancing agreement executed by a group of companies (Grupo Celsa) with 91.05% of the financial liabilities encompassed in a credit facility agreement to refinance principal and interest, the novation of certain bilateral working capital instruments to extend its valid term for five years and the signing of an agreement to provide additional liquidity amounting to 81 million euros, all with the provision of new security, discharge of others and novation of certain bilateral agreements.—Application for extension of the deferral to the dissenting financial institutions and of the stay on enforcements for 3 years, the maximum term allowed by the law.—Fulfillment of legal requirements: there was sufficient quorum, favorable independent expert's report, significant increase in available credit and modification of the obligations through extension of their maturity period, besides which the resolutions were recorded in a public deed.—Timing requirements: the new repayment periods were reasonable (two-year grace period and five-year repayment term in the case of one of the agreements; and extension of the maturity period by two years in the case of the other).—Criteria to assess disproportionate sacrifice: (i) the percentage of dissenters: the lower the percentage the greater the sacrifice that can be required by the creditors supporting the refinancing; (ii) the recovery the creditors would achieve in a potential insolvency proceeding from maturity of the debt if it were not refinanced and approved; (iii) the terms and conditions of the agreed deferral: the court concluded that the deferral may be extended up to the five years stipulated by the majority of the financial creditors; the reason is that the three-year limit mentioned in the law only relates to the period in which the enforcements of the dissenting creditors' claims will be stayed.—Definition of deferral: an agreement not to sue (*pactum* de *non petendo*), a new maturity date, a specific repayment schedule, an early repayment system, the postponement of payment of a claim, etc.—Effects of court approval: the court broadened the effects of the refinancing agreement to take in the dissenting creditors in three ways: (a) it extended the final maturity date of one of the credit facility agreements; (ii) extended the new repayment schedule period, with a grace period, stipulated in another agreement and (iii) determined that all the creditors could be equal with respect to mandatory and partial early repayment clauses, so that the dissenting institutions could have their claims repaid within the same time periods and in the same manner as the institutions that supported the refinancing agreement.—Effects that were not allowed: the court did not allow the dissenting financial institutions' late-payment interest to stop accruing between the maturity date of the instruments and the application for approval: the accrual of interest is a legal effect and the approval cannot mean the provision or extension of credit in any manner by the dissenter; court approval cannot force a third party to waive its rights (article 6.2 CC).—Effects of the court approval on secured creditors: pooling agreement for enforcement of security interests: in the credit facility agreements the dissenting creditors expressly, clearly and categorically disallowed unilateral enforcement of their security interests: therefore, taken individually, secured dissenting creditors do not have any collateral.—Stay of enforcements for three years: to guarantee the integrity of the assets and ensure the viability of the business group.

Other rulings

DECISION dated June 4, 2012 rendered by Coruña Commercial Court number 1

Article 190.4 LC.—Conversion of an abbreviated proceeding into an ordinary proceeding.—The court held that a material change in circumstances would place the insolvent party in a position to enter into a new business activity as a result of a recent legislative change in the biodiesel market.—This new position is incompatible with the extremely short statutory period for proposing an arrangement that exists in abbreviated proceedings (up to 5 days before the insolvency managers issue their report).—The court decided to change the type of proceeding, to an ordinary insolvency proceeding to handle the insolvency party's new expectations, which would allow it, if it proved to be the successful bidder for a share of the production of biodiesel, to secure its continuity through an arrangement with the creditors.

JUDGMENT dated January 23, 2013 rendered by Valencia Commercial Court number 1

Article 62 LC.—Termination by breach: a financial institution that challenged the list of creditors for recognition of its claim for damages in respect of a breach by the insolvent party of a finance lease agreement.—Neither the breach nor the ability of the termination of the agreement to produce an effect were questioned: the issue was confined to deciding on the ability to produce an effect of the penalty clause in the agreement.—Power of the courts to make an adjustment: *pacta sunt servanda*, the penalty clause must be observed and not excluded, but had necessarily to be adjusted because it was a partial and not a full breach: the creditor terminated the agreement and recovered possession of the asset: the enforceability of the penalty clause could not be recognized because it would amount to recognizing a claim equal to 25% of the outstanding installments until 2018, which would be disproportionate in relation to the installments owed and the portion of the agreement performed in the past.—Adjustment of the penalty clause: it was set at three lease installments under the agreement.

DECISION dated July 4, 2013 rendered by Valencia Commercial Court number 2

Article 2 LC, and articles 19 and 20 LEC.—Petition for voluntary insolvency filed by the debtor and later withdrawn: upheld: the litigant has the authority to dispose of the subject matter of the proceeding and he can withdraw from the proceeding unless the law prevents or restricts his doing so for reasons of general interest or to the benefit of third parties.—The court held that the company that petitioned for insolvency had withdrawn from the proceeding; the company stated that the formalities underway would result in the execution of a refinancing agreement with the creditor financial institutions and bring it out of technical insolvency.

Subdirectorate-General of Wealth Taxes, Fees and Public Prices

BINDING RULING rendered on April 20, 2013 by the Subdirectorate-General of Wealth Taxes, Levies and Public Prices

On the return of a court fee paid upon the filing of a complaint in relation to checks or bills of exchange before or after the insolvency order.—If that type of complaint is filed before the insolvency order and while the complaint process is underway an insolvency order is

issued on the defendant, the process must continue or be joined with the insolvency proceeding, according to article 51 LC. Therefore, even if that process is affected by the insolvency proceeding –which would prevent any separate enforcement- the procedural steps will continue and the court fee cannot be returned.—If the complaint in relation to checks or bills of exchange is brought after the insolvency order on the defendant and for that reason is not admitted for consideration, the court fee cannot be returned either, because the insolvency order is public knowledge and the filing of a petition requires a lawyer and court procedural representative, and therefore that position must be known by the defendant who cannot be deemed not to be aware of that circumstance.

3. PUBLICATIONS

Las refinanciaciones y los acreedores con garantía real ('Refinancing processes and secured creditors) (Fernández & Thery), Expansión, June 3, 2013.

Nuevas medidas para proteger a los deudores hipotecarios" (New measures to protect mortgage debtors**)** [Yánez Gómez] Diario de Mallorca, June 11, 2013

¿Es posible un concurso de acreedores como en Detroit? (Can an insolvency proceeding be as if we were in Detroit?) [De la Fuente] Diario de Navarra, July 26, 2013