

INDUSTRIAL PROPERTY

COMPENSATION IN CRIMINAL PROCESSES

A Spanish Criminal Court recently passed a Ruling that recognised the right of the injured party, one of the world's most famous and prestigious sports companies, to receive € 463,968 in compensation for the damages caused to it.

The events occurred in 2002 when the customs authorities in Algeciras and Irún suspended an importation of more than 51,800 sports trousers, which were fraudulently identified as the Adidas brand. During the legal investigation, it was proven that the exporter of the goods, an alleged company registered in the tax haven of Guernsey, did not exist, and that the invoices with which the Spanish importer aimed to justify the legal origins of the goods were also false. Given these antecedents, Criminal Court 1 of San Sebastián sentenced the administrator of the Spanish company to one year and three months in prison for the offence committed against industrial property, and also sentenced them to four months in prison for the offence of using false mercantile documents in trial. This Ruling, which was passed in the criminal jurisdictional order and which is still not final, also recognised a right for the injured party to receive a significant sum as compensation, despite the goods being seized at the customs and not being put on sale. The Court considered the reasoning of indifference for legal purposes that the product had not reached consumers to be correct, as the aspects relating to its determination and calculation was the moment when the profit occurred for the company against whom damages were incurred, i.e., with the distribution and sale of original products to the retailer.

TAX

THE TAX SITUATION REGARDING ITP (TRANSFER TAX) AND AJD (STAMP DUTY) OF MARRIAGE ANNULMENTS UNDER THE OWN-ASSETS AGREEMENT WORSENS

The Directorate General for Taxation has issued a binding consultation in the sense that the exemption set out in Article 45.I.B.3 of the Transfer Tax and Stamp Duty Law (ITP and AJD) does not apply to the transfer and adjudications of goods as a consequence of annulments of married couples who were married under the own-assets agreement, whereby there is no similarity in the application of tax benefits. This criterion has been welcomed by the Directorate General for Taxation, a department of the Catalan Regional Government, which amends the interpretation that it had been making to date of the rule.

SUPPRESSION OF THE CAPITAL GAINS TAX AND VAT NEWS

In June, The Treasury drew up a Draft Bill containing some of the latest tax measures announced by the government, such as the suppression of Capital Gains tax or the generalisation of the monthly VAT returns system. The legislative technique for the suppression of the proposed Capital Gains tax is the amendment

of Article 33 of the Capital Gains Tax 19/1991, of 6 June 1999, establishing a general deduction on 100% of the total tax liability, for both taxpayers due to personal and real obligation. The content is also suppressed of Articles 36, 37 and 38 which cover self-assessment, persons who are obliged to declare and the submission of the declaration. This way the aforementioned suppression of Capital Gains Tax is immediate and effective, but respecting the autonomous funding system set out in Law 21/2001, of 27 December 2001, since all amendments to this Law should undergo a joint examination within the framework of an Autonomous Community funding system reform process.

In the VAT, we should first point out the amendment to Articles 4.Two and 5.1.b of Law 37/1992, of 28 December 1992, which specifies that mercantile institutions will be classed as entrepreneurs or professionals, unless proven otherwise. This amendment includes the community jurisprudence which had already stipulated that it is not possible to state, plainly, that a company is classed as an entrepreneur due to its simply being one. This change will have an immediate effect on transactions carried out by certain holding and property-type companies that remain inactive. Secondly, and to include community jurisprudence and administrative doctrine as the norm, the requirements of Article 7.1 a) of the Law are streamlined to apply non-liability in cases of the transfer of the totality of business equity. It is no longer a requirement, to apply non-liability, that the transfer is made in favour of a single acquirer and that there is continuity in the exercise of the trading activity. However, clarification is made that mere transfers of goods cannot enjoy non-liability, with the transfer of leased goods considered as such when they are not accompanied by an organisational structure of material and human production factors, or one of these, that may mean it is considered to constitute an autonomous economic unit. Transfers in favour of the occasional entrepreneurs referred to in Article 5.1.a.d) of the Tax Law many not be liable either. Finally, we would like to highlight the possibility opening up for all taxpayers, as of 1 January 2009, to obtain a monthly VAT refund. As an exception to the general refund system at the end of each calendar year, it is expected that taxpayers may choose to obtain monthly refunds, which will oblige them, however, to submit declarations on a monthly basis. Similarly, implementation of this measure more accurately delimits the Administration's authority to request taxpayers for guarantees and the possibilities for the Administration to act.

ESCAPE CLAUSES FOR PROFESSIONAL FOOTBALLERS

In terms of contracts, it is common to agree a guarantee that ensures the fulfilment of an obligation through the so-called Escape Clause that stipulates the payment of an amount in the event that, for sports professionals (the practice of which is common, especially in the world of football), is usually the early termination of the contract.

The Supreme Court recently confirmed the pronouncement of the High Court of Justice of the Basque Country, in the so-called ZUBIAURRE CASE. The case examined deals with, among other things, a claim by a Football Club to a footballer, based on an Escape Clause which obliged the player to pay the Club 30 million euros should he terminate his working relationship before the end of the lifetime of the contract, as was the case. Employment Tribunal No. 1 of Donostia upheld the lawsuit, reducing the sum to 5 million euros, a sentence that was confirmed by the High Court of Justice (in its Ruling of 17 October 2006). The case having been put before the Supreme Court (in the Appeal for the Unification of Doctrine), the Ruling was pronounced final on 12 May 2008 with the Appeal not upheld, so confirming the Ruling of the Court.

We feel that this pronouncement is of great interest because, apart from assuming the validity of this business practice of using Escape Clauses, it offers a series of criteria which, the Supreme Court feels, should justify these agreements, which entail a limit to the constitutional right to work. These include examining whether the clause was imposed by the Club or if it was the result of free negotiation by the parties, if the player simply fails to comply with the clause or whether he signs for another Club; if the player constituted an asset for the Club according to his professional career; and comparing the amount stipulated in the escape clause with the player's salary (e.g. by asking how many years the player should work to pay this rescission amount). The pronouncement offers a series of criteria which will undoubtedly ease the way forward in negotiations and drafting of these types of agreements, and will constitute a reference for future Court Rulings.

PANNONE LAW GROUP

A meeting of the Pannone Law Group Board of Directors, the international group of which the Pintó Ruiz & Del Valle is a member, was held in Manchester on Saturday 21 June. This meeting took place at the firm's offices, which has its headquarters in Manchester, Pannone & Partners. A series of working meetings were held alongside the Board to discuss employment, property tax, mergers and acquisitions and lawsuits.

CATALAN CIVIL CODE RELATING TO ORGANISATIONS

Recently, 2/5/08 saw the publication of Law 4/2008, of 24 April 2008, of the Third Book of the Catalan Civil Code relating to organisations. This third book comprises three titles. The first contains the general provisions, defining the scope of application, regulating the basic rules of action and representation of organisations, their accounting and documentary system, acts of structural modification, the procedure for liquidation following dissolution and the basic characteristics of the systems of publicity of the registers of organisations dependent on the Catalan Regional Government. The second title comprises the private legal system of associations, in accordance with constitutional jurisprudence, which has understood that the Autonomous Communities that have assumed the jurisdiction concerning this matter are authorised to regulate both the associations' internal system (in other words, the organisation and operation), and the external system or participation in trade, on the understanding that they do not contradict the basic regulations set out by the State. The third title, which deals with foundations, contains innovations such as the establishment of a minimum sum for an initial provision that should be made in the form of productive goods, and the requirement that the founding charter be accompanied by an economic feasibility project to ascertain whether the funding established to fulfil the planned aims is sufficient. We should also highlight the legal imposition of the duty of separating government and ordinary management functions.

INHERITANCE

Law 10/2008, of 10 July 2008, of the Fourth Book of the Catalan Civil Code, relating to inheritance, was published on 17/7/08. This Law follows the previous Inheritance Code, although it does introduce certain changes, which include a limitation to the possibility that persons who provide social, residential or similar care by virtue of a contractual relationship with the deceased may be favoured in the inheritance, wills are streamlined, and may deal with 10% of inheritance assets compared with the previous 5%; it avoids holographic wills from being voided due to a lack of a date and place, when they may be accredited another way; in terms of intestacy, inheritance rights are recognised, equally with the widowed spouse, as with the partner of a stable couple; with regard to the position of the widowed spouse (now compared with the partner of the stable heterosexual or homosexual couple), the option of exchanging universal enjoyment for the enjoyment of the family home if it is owned by the deceased has been chosen, plus an aliquot quarter of the inheritance, with prior deduction of the value of the enjoyment in question; in terms of widowed life, it is now not only attributed to the widowed spouse, but also to the surviving member of a stable union couple, and does not now really consist of a quarter of the body of the estate, but this quarter acts as a maximum limit after the standard of living, age, state of health, salaries or income received or foreseeable, among other things, have been taken into account; in short, similar criteria apply to those that serve to establish the compensatory pension in marriage proceedings.

BARCELONA

Beethoven 13, 7^o
08021 Barcelona
Tel: 34 93 241 3020
Fax: 34 93 414 38 85 / 11 57
bcn@pintoruizdelvalle.com
www.pintoruizdelvalle.com

MADRID

Velázquez 146, 1^o Dcha
28002 Madrid
Tel: 34 91 563 86 78
Fax: 34 91 563 32 29
ma@pintoruizdelvalle.com
www.pintoruizdelvalle.com

PALMA

Sindicato, 69-7^o
Edificio Banco Santander
07002 Palma de Mallorca
Tel: 34 971 71 60 29
Fax: 34 971 71 90 75
palma@pintoruizdelvalle.com

ALICANTE

César Elguezábal 39, pp1 dcha
03001 Alicante
Tel: 34 96 514 59 69
Fax: 34 96 514 53 53
ali@pintoruizdelvalle.com
www.pintoruizdelvalle.com

Member of PANNONE LAW GROUP / A.E.I.E.

Alicante, Andorra, Beijing, Barcelona, Berlin, Bruxelles, Buenos Aires, Dili (Democratic Republic of Timor-Leste), Düsseldorf, Frankfurt am Main, Genève, Lisboa, London, Lyon, Madrid, Manchester, Milano, Montevideo, Montreal, München, Nicosia, Palma de Mallorca, Paris, Québec, Roma, Rotterdam, San José de Costa Rica, Santiago de Chile, Sao Paulo, Shanghai, Tel-Aviv, Warsaw and Wien.

© August 2008 Pintó Ruiz & Del Valle