

Supreme Court Sentence number 398/2014 of 17 July

This judgment once more analyses the figure and nature of the warrant on first requirement, a non-typical personal guarantee distinguished from the bond by its independent nature with respect to the principle obligation it guarantees.

The case concerned a conflict mentioned within a real estate purchase, where the purchaser of a series of plots reports the seller and also calls for their right to suspend the payment of the postponed prices until the disturbance in their domain or the guarantee of the return is declared, and the payment of the warrant on first requirement by the guarantor of the purchaser is suspended.

The courts of instance upheld the plaintiff's intentions, commenting that if the purchaser has recognised the right to suspend the payment of the price, the intention can only be carried out by suspending the warrant on first requirement.

However, the Supreme Court admitted the cassation appeal brought in by the seller, and declared that although it agreed with the courts of instance in suspending the payment of the postponed price, it could not do so with respect to the suspension of the warrant on first requirement.

The Supreme Court sustained that the legal nature of the warrant on first requirement is that of "*a personal and non-accessory independent and autonomous guarantee with respect to the underlying relationship, and therefore that the guarantor cannot oppose exceptions of the beneficiary other than those derived from the guarantee itself.*"

The Court therefore recalled that the guarantor could not oppose a beneficiary who claims the payment of exceptions other than those derived from the guarantee itself, as this would make the warrant on first requirement an accessory guarantee and eliminate the nature of its true function. This implies the guarantor's obligation of making payment to the beneficiary when they should claim it, as it is configured as an autonomous obligation different from those derived from the contract whose fulfilment is guaranteed.

In short, the Court concluded that the performance of the warrant on first requirement could not be suspended on the request of the debtor as a consequence of a controversy arising in the principal contract, as this guarantee constituted a new independent contractual relationship outside the principal contract, and the validity and effectiveness did not depend on the validity and effectiveness of the underlying business.